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ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 400

DATE: Thursday, October 22, 1992

BEFORE:

A. KOVEN Chairman

E. MARTEL Member

FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416)963-1249

EARR
ASSOCIATES &
REPORTING INC.

(416) 482-3277

2300 Yonge St., Suite 709 Toronto, Canada M4P 1E4



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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of a Notice by The Honourable
Jim Bradley, Minister of the Environment,
requiring the Environmental Assessment
Board to hold a hearing with respect to a
Class Environmental Assessment (No.
NR-AA-30) of an undertaking by the Ministry
of Natural Resources for the activity of
Timber Management on Crown Lands in
Ontario.


Hearing held at the Civic Square,
Council Chambers, 200 Brady Street,
Sudbury, Ontario, on Thursday, October
22, 1992, commencing at 9:00 a.m.

VOLUME 400

BEFORE:

MRS. ANNE KOVEN
MR. ELIE MARTEL

Chairman
Member



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A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	MINISTRY OF NATURAL
MS. C. BLASTORAH)	RESOURCES
MS. K. MURPHY)	
MR. B. CAMPBELL)	
MS. J. SEABORN)	MINISTRY OF ENVIRONMENT
MS. N. GILLESPIE)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
MR. D. HUNT)	
MR. R. BERAM		ENVIRONMENTAL ASSESSMENT BOARD
MR. J.E. HANNA)	ONTARIO FEDERATION
DR. T. QUINNEY)	OF ANGLERS & HUNTERS
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MR. J. IRWIN		ONTARIO METIS & ABORIGINAL ASSOCIATION
MS. M. HALL		KIMBERLY-CLARK OF CANADA LIMITED and SPRUCE FALLS POWER & PAPER COMPANY

APPEARANCES (Cont'd):

MR. R. COTTON		BOISE CASCADE OF CANADA LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES)	ASSOCIATION
MR. P. ZYLBERBERG)	NORTHWATCH COALITION
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MR. H. GRAHAM		CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN		DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC		MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES		ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI		BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY

APPEARANCES (Cont'd):

MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON
MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

<u>Argument:</u>	<u>Page No.</u>
Cronk (cont'd)	68517-68595
- Cassidy (planning issues)	68595-68627
Cronk (cont'd)	68640-68644

1 ---Upon commencing at 9:00 a.m.

2 MADAM CHAIR: Good morning, Ms. Cronk.
3 Are we ready to continue hearing your argument?

4 MS. CRONK: Now, that the machine is
5 working, yes, Madam Chair.

6 Good morning, Madam Chair. Good morning,
7 Mr. Martel.

8 CONTINUED ARGUMENT BY MS. CRONK:

9 When we broke yesterday afternoon, Madam
10 Chair, Mr. Martel, I had commenced our submissions
11 concerning generally the subject of maintenance and, in
12 particular, issues relating to tending and I had just
13 immediately before the break yesterday afternoon
14 indicated to you what the position of the Industry was
15 specifically relating to tending, and I had indicated
16 that it is the Industry's position that a full range of
17 tending alternatives be available in the area of the
18 undertaking, and that the need for such a full range of
19 tending alternatives has been established on the
20 evidence.

21 We ask the Board to consider in this
22 regard our detailed written submissions found at pages
23 249 and following, and I'd like to spend some time this
24 morning outlining our submissions to you relating
25 particularly to the use of herbicides for tending and

1 site preparation purposes.

2 When I speak about the use of herbicides
3 I do so in recognition of the fact that they are used
4 in appropriate circumstances for site preparation but
5 also for tending.

6 The debate on the evidence, I suggest,
7 with respect to tending generally concerns the use of
8 herbicides and in the end, I suggest, what it has come
9 to is the proposition by Forests for Tomorrow, as I
10 indicated yesterday, that there should be a full ban on
11 aerial spraying of herbicides and that there should,
12 after 12 months from the date of your decision in this
13 case, effectively be preclusion of the future use of
14 2,4-D for any purpose in timber management.

15 So that what is in issue, I suggest, in
16 all of the evidence is the method of application of
17 herbicides and the type of chemicals used, that is, one
18 in particular, 2,4-D.

19 Excuse me, Madam Chair. I brought my
20 technical specialist with me this morning. Mr. Martel,
21 if I don't get rid of this, I'm going to ask for an
22 early break. I can hear it...

23 MR. MARTEL: Just move to the next mike.

24 MS. CRONK: Sorry for that distraction.
25 That arises because of two conditions in Forests for

1 Tomorrow's conditions before you. The first, in
2 particular, is condition 96(1)(g) which is a provision
3 that contains the proposal for an outright ban on
4 aerial spraying, then condition 96(1)(f) which deals
5 specifically with 2,4-D and 96(1)(c) dealing with
6 non-chemical alternatives.

7 Now, those are the numbers of the
8 conditions as they existed in the March, 1992 version
9 of FFT's terms and conditions. The language remains
10 the same, I didn't check to see if the numbers are the
11 same, but the language remains the same.

12 It is submitted that those proposals by
13 FFT, Madam Chair, ignore the need demonstrated on the
14 evidence which you have heard for the continued use of
15 2,4-D in the area of the undertaking.

16 Secondly, that they ignore the need,
17 again demonstrated on all of the evidence that you
18 heard, for the aerial spraying of herbicides because of
19 the practical implications of tending options being
20 constrained to ground application methods only for
21 herbicides, and ignore the fact that while non-chemical
22 alternatives for tending may be available in the area
23 of the undertaking - and by that I mean feasible in the
24 sense that they exist - the costs of utilizing
25 non-chemical alternatives and the probability of

1 ineffectiveness of non-chemical alternatives on a broad
2 scale in the area of the undertaking, renders them in
3 practical terms not a real alternative as a general
4 proposition for the use of herbicides, and I refer
5 specifically to manual and mechanical tending methods.

6 Now, there's two ways to look at the
7 issue of whether aerial versus ground spraying, how the
8 issue of aerial versus ground spraying should be
9 resolved. One can say, at least it could follow from
10 FFT's proposed conditions, that ground spraying of
11 herbicides is to be looked to as the primary means to
12 achieve tending in the area of the undertaking.

13 Alternatively it can be said that ground spraying in
14 combination with other non-chemical alternatives; in
15 other words, ground spraying with manual or mechanical
16 measures being looked to.

17 It's my submission to you that whether
18 used alone or in combination, for the reasons that I'll
19 outline to you. That's just not practical given what
20 you've heard about tending requirements. And I propose
21 to speak first about the evidence that you've heard
22 regarding chemical versus non-chemical tending
23 alternatives generally.

24 It's the evidence of the MNR and the
25 Industry tending experts before you that within the

1 area of the undertaking chemical release operations
2 represent the most effective means, not an effective
3 means, the most effective means for releasing crop
4 species from competing vegetation.

5 The MNR witnesses spoke about this in
6 terms of cleaning in the area of the undertaking. The
7 Industry witnesses spoke about it in terms of releasing
8 from competition for a limited period of time, but what
9 they all were talking about was suppressing competition
10 for a sufficient period of time in the early
11 establishment of desired stands or species so as to
12 ensure their survival.

13 What we're talking about, Madam Chair,
14 Mr. Martel, is giving desired crop species, if I can
15 use this expression, a jump start over competition to
16 make sure that they live. What we're also talking
17 about is that survival being assured by that method
18 herbicides are looked to and can be relied upon to
19 increase the growth and yield to be obtained from the
20 desired crop species.

21 Now, you have heard from the Industry and
22 MNR witnesses, people who actually conduct tending
23 operations in the area of the undertaking, not only
24 that the use of herbicides is the most effective means
25 for cleaning but that it is the most practical method

1 of doing so in the area of the undertaking. And I
2 suggest to you, Madam Chair, Mr. Martel, that it's of
3 the utmost importance that that evidence has not been
4 challenged by any tending expert to the contrary in
5 this hearing. It is the most effective and the most
6 practical means of achieving tending objectives. Not
7 one tending expert came before you to say that any
8 method other than herbicides was more effective or more
9 practical for tending in the area of the undertaking.

10 Indeed there's strong evidence before you
11 to the contrary, and I would ask you to look at our
12 written submissions at pages 249 to 251 in particular.
13 There are two basis or fundamental issues raised by
14 Forests for Tomorrow in their written submissions to
15 you that I wish to deal with at the outset with respect
16 to herbicides and tending.

17 The first suggestion that is made in
18 FFT's written submissions is that retreatment is
19 frequently required with the use of herbicides. You
20 will find that at paragraph 790, page 327 of Forests
21 for Tomorrow's submissions. And the evidence quoted in
22 support of that assertion is a transcript extract of
23 the evidence of Dr. Robert Campbell, an MNR witness,
24 and a tending expert at Volume 109, pages 18131 to
25 18132.

1 If you look at that extract, Madam Chair,
2 Mr. Martel, as we have, you will see that what Dr.
3 Campbell was talking about was the historical situation
4 before glyphosate was available for control of
5 competition when 2,4-D was used specifically for
6 control of aspen.

7 So, in other words, before 1984 when
8 glyphosate commercially became available on any broad
9 level in the area of the undertaking tending experts
10 were restricted to the use, they only had available to
11 them in any sense for timber management purposes, 2,4-D
12 for the control of aspen and competitors like aspen.
13 And you've heard tending experts that 2,4-D does not
14 operate silviculturally in the same way glyphosate
15 does, so that 2,4-D in the case of aspen competition
16 simply kills the brush at the top and not resprouting
17 from the roots. And you've heard about the
18 proliferation of aspen by suckering.

19 So that what Dr. Campbell said was that
20 historically, before the tool of glyphosate was
21 available, when that kind of a competition problem was
22 being dealt with repeat treatments of 2,4-D were
23 sometimes necessary, but it was specifically in that
24 situation, specifically addressing a particular time
25 period and a particular kind of competition problem.

1 And I'm going to suggest to you, Madam
2 Chair, Mr. Martel, that the evidence before you is not
3 that herbicides often require repeat retreatment -
4 maybe that's a redundant statement - require
5 retreatment, but in fact that is the evidence before
6 you with respect to manual tending and that the
7 evidence with respect to herbicides, the overwhelming
8 evidence with respect to herbicides is exactly the
9 reverse.

10 Mr. Galloway, for example, at Volume
11 109 - I'm going to give you the page number for this
12 because it's in our written submissions - at page 18188
13 said this:

14 "There is less need...", speaking of
15 the use of herbicides:

16 "There is less need for retreatment
17 due to the effectiveness of the
18 herbicides as compared to manual and, in
19 fact, it would be rare to have an area
20 that would be retreated more than once or
21 twice at the most, that would be a rare
22 occasion."

23 That's Mr. Galloway. Dr. McCormack told
24 you exactly the same thing.

25 In contrast the evidence indicates that

1 when manual tending measures are used repeat treatments
2 are often required. That's one of the big problems
3 with manual tending, if I can put it that way. MNR
4 witnesses said that when manual tending treatments are
5 employed, it is their experience that on productive
6 sites where competition is severe, retreatment of
7 manually released areas is always needed unless an
8 effective chemical treatment is applied during the
9 initial entry. This means, they said, that the
10 investment is paid for twice.

11 Further, manual treatments are often not
12 effective depending upon the nature of the competing
13 vegetation. And I would ask you to consider, in this
14 context, the evidence before you that I referred to
15 yesterday regarding Mr. Marek's management of his
16 plantations in the Limestone and Tyrol Lake areas and
17 to look specifically at Exhibit 1538 where you will see
18 that for the purposes he sought to achieve the creation
19 of black spruce monocultures, not one or two, but often
20 five and six manual cleaning, manual tending treatments
21 were carried out.

22 Mr. Marek told you that one of the
23 consequences of intensive forestry as he described it
24 and as he understood it and defined it for you was that
25 the level of tending required will be very high, but he

1 also told you that what he meant by that when he talked
2 about intensive forestry in that context was he meant
3 the creation of monocultures and he conceded under
4 cross-examination that if that was not the objective
5 then the need for repeated tending treatments would
6 decrease.

7 So, in other words, on his evidence when
8 you need repeated treatments is when you're seeking to
9 create a monoculture and if that's not the management
10 objective you won't have that retreatment need in the
11 same way.

12 So I suggest to you that it's a
13 fundamental feature of the use of herbicides that
14 retreatment generally is not necessary and that their
15 use in timber management should be contrasted in that
16 regard to their use for agricultural purposes, where in
17 timber management the evidence before you is that only
18 once and sometimes twice during the full rotation of a
19 crop species will a herbicide treatment be necessary.

20 Now, I said that there were two basis or
21 fundamental concepts flowing out of FFT's tending
22 submissions that I wish to deal with at the outset.
23 The first I've dealt with. The second is this: The
24 suggestion by Forests for Tomorrow that suppression of
25 competing vegetation by herbicides is often relatively

1 short lived. That's found at page 327, paragraph 790.

2 That, Madam Chair, to put it succinctly
3 is the whole point, that's what herbicides are intended
4 to do, they're intended to suppress competition, you
5 heard from tending experts, for a short period of time
6 to give an advantage to the growth of desired species
7 so that they can survive.

8 Mr. Marek told you in his evidence that
9 it was his view that the purpose of the tending
10 treatments, the chemical tending treatments that he
11 carried out was to eradicate, to destroy all
12 competition on site.

13 I specifically cross-examined him on that
14 because that was contrary to all of the tending
15 evidence with respect to herbicides that you heard from
16 all of the MNR and OFIA tending experts who told you
17 quite explicitly that the purpose of the use of
18 herbicides was not to eradicate, not to for ever
19 remove, not to for ever stunt but merely to suppress to
20 achieve a transitory growth situation.

21 Mr. Marek simply explained that given his
22 purposes on his plantations - and I remind you what
23 those were, he sought to achieve a different purpose
24 and he used herbicides for a different purpose - I say
25 to you that that does not reflect modern timber

1 management tending practice in the area of the
2 undertaking on all of the evidence that you've heard
3 from the people who do it.

4 The next issue then, Madam Chair, Mr.
5 Martel, is the issue of aerial spraying and the
6 proposed ban. May I say first that no tending expert
7 who testified before you supported this.

8 Mr. Marek supports aerial spraying of
9 herbicides, and I'm going to take you to his evidence
10 where he says that. Mr. Mazur said nothing about this
11 and Mr. Benson said nothing about the issue, that is, a
12 ban or continued use of aerial spraying one way or
13 another. The evidence from all the tending experts is
14 unequivocally in support of the necessity for aerial
15 spraying in the area of the undertaking.

16 You may remember that in the October,
17 1989 Joint Task Force report that task force was
18 composed of representatives both of Industry and MNR
19 and examination of the FMA program was undertaken. The
20 Industry produced that report to you and in it it says:

21 "Competition control is essential to
22 timber production on productive sites and
23 aerial herbicide operations are the only
24 effective means of competition control in
25 most northern Ontario situations."

1 And I emphasize, in most northern Ontario
2 situations. That is why the Industry comes before you,
3 Madam Chair and Mr. Martel, and says we need the
4 continued prospect of the availability to us of a range
5 of tending measures. Because not in all situations is
6 the aerial spraying of herbicides necessary but in
7 many, many situations in northern Ontario.

8 So that the Industry wants to be able to
9 continue to use manual tending measures where they're
10 appropriate and practical; mechanical tending measures
11 where they're appropriate and practical; and aerially
12 applied herbicides where that's necessary.

13 Dr. McCormack testified in support of the
14 aerial spraying of herbicides and said that it was the
15 best means of treating areas that are not readily
16 accessible by other tending methods and he outlined for
17 you the advantages of aerial spraying versus ground
18 application techniques and he suggested that those
19 advantages included, when you used aerial spraying
20 methods, the achievement of uniform coverage of the
21 herbicide, minimal site disturbance, lower costs and
22 the application of less volume of herbicide than is
23 required with ground application methods.

24 That's an important point, Madam Chair.
25 It was Dr. McCormack's evidence that managers, by using

1 aerial spraying techniques, can achieve a level of
2 suppression of competition that is equal to or greater
3 than that achievable with ground application methods by
4 using lower volumes of chemical. The professional
5 foresters who carry out tending activities in the area
6 of the undertaking agreed with Dr. McCormack's
7 evidence.

8 I suggest to you that two points emerge
9 from this. First, that aerial application has been
10 demonstrated on the evidence before you to be the only
11 effective means of tending for many, many areas in
12 northern Ontario.

13 Secondly, it's simply impractical, I
14 suggest, given the size of the area of the undertaking
15 to assert that ground application methods used alone or
16 in combination with manual or mechanical measures can
17 realistically be used to achieve a required level of
18 tending in the area of the undertaking, and that's not
19 just a question of cost, it's the question of access,
20 it's the question of human resources, it's just too big
21 an area.

22 The area of the undertaking, you heard in
23 evidence, is approximately 465,000 square kilometres of
24 which 385,000 you may remember is Crown land. That's
25 square kilometres of Crown land.

1 One of the arguments advanced by Forests
2 for Tomorrow in its written submissions to you as to
3 why there should be a ban on the aerial spraying of
4 herbicides is that it's suggested that there is a move
5 to that in the United States and that in the U.S.
6 forest system on national forest lands in some areas
7 that approach has been taken.

8 I'm going to come to that in more detail.
9 But one of the documents referred to by Forests for
10 Tomorrow, one of the documents referred to by Forests
11 for Tomorrow in that regard is a Record of Decision of
12 the USDA Forest Service regarding the Osark Mountains
13 area, that's Exhibit 1236.

14 MR. MARTEL: What's that number again?

15 MS. CRONK: 12367, sir. And I'd like to
16 direct your attention to certain parts of that report,
17 and I propose just to read it briefly to you.

18 At page 10 in a discussion of the
19 effectiveness of plant control, being the effectiveness
20 of competition, the alternatives before the
21 decision-maker for consideration were being described,
22 the various options that were in front of them are
23 being described and this is what they said about
24 alternative or option D that was before them.

25 "Alternative D would eliminate use of

1 herbicides. The loss of this method
2 would surrender our ability to meet
3 forest plan goals. Herbicides are
4 essential to provide the effective and
5 precise plant control needed for such
6 resource objectives as reduced stump
7 sprouting, advance oak regeneration under
8 mature stands and release of desirable
9 species in even and uneven-aged
10 management. Therefore, alternative D is
11 unacceptable to me."

12 Then over at page 13 specifically with
13 respect to aerial application, midway down the page:

14 "Some people feel that aerial
15 herbicide application increases risks to
16 humans and the environment, however,
17 aerial application actually reduces
18 worker risk from herbicides because only
19 the mixer/loader comes in close contact
20 with the chemical. Risk to the public is
21 also very low with our required
22 mitigations. In spite of findings about
23 the utility and safety of aerial
24 applications, I have determined that
25 there are no locations within the study

1 area where it is an essential tool, that
2 is, we can accomplish our objectives in
3 other ways."

4 So it is correct to say that the result
5 of this report was to move to non-aerial application
6 methods in the Osark Mountain area, the study area, but
7 the report indicated two things: First, that the
8 continued use of herbicides was necessary; and,
9 secondly, that the risk to the public from the use of
10 aerially applied herbicides was very low.

11 It happened that in that particular area
12 they could achieve their tending objectives without
13 relying on aerial spraying methods, and the passage
14 that I just read to you, I suggest, makes it clear that
15 it is for that reason that the decision-makers
16 concluded to move away from aerial spraying. And that
17 becomes, I suggest, very important because the size of
18 the study area being reviewed in this report in which
19 it was concluded that other methods were practical and
20 feasible to achieve management objectives is a fraction
21 of what it is in the area of the undertaking.

22 Page 1 of this report indicates that the
23 area being studied was 2.7-million acres, that's an
24 order of magnitude smaller, Madam Chair, Mr. Martel
25 than the extent of Crown land in the area of the

1 undertaking with which we are concerned. It translates
2 to approximately 10,800 square kilometres. Compare
3 that to 385,000 square kilometres, and I say to you
4 again that in all of the evidence before you the use of
5 ground application methods in preference to aerial
6 application methods is simply impractical in the area
7 of the undertaking.

8 There are certain problems that are
9 specific to the efficacy and the feasibility of ground
10 application methods on any broad level that have also
11 been explained and detailed in evidence before you.

12 First, I've alluded to this already, the
13 obvious access problem. If you're going to do it on
14 the ground you've got to be able to access the
15 treatment area and the competition and that means
16 roads.

17 Secondly, from a silvicultural
18 perspective, ground applications of herbicide,
19 according to some experts, are not suitable for the
20 protection of the young seedlings because the use of
21 equipment and personnel on the ground can and often
22 does result in damage to the desirable trees and
23 seedlings because you're moving people and equipment.

24 Thirdly, the cost factors involved,
25 because of the features I've just described to you and

1 because of the fact that you're moving people and
2 equipment, it's more expensive.

3 Fourthly, and this is very important in a
4 practical sense to remember, I suggest, you heard from
5 the tending experts that there is often a very narrow
6 time frame, a very narrow window within which spraying
7 operations can effectively be carried out. And what
8 that means is, depending on the duration of the spray
9 window ground applications may be totally out of the
10 question because they take longer to (a) organize, (b)
11 carry out, and (c) there's resources problems if the
12 equipment isn't available and the people aren't
13 available precisely when you need them your treatment
14 goes out the window.

15 Fourthly the point that I've already
16 alluded to made by Dr. McCormack, that you can achieve
17 the same silvicultural result by the use of aerially
18 applied herbicides using less volume of the chemical
19 than with ground application methods.

20 There are also worker safety issues
21 involved with the use of ground application methods.
22 Indeed that was one of the points made in the USDA
23 Forest Service Record of Decision that I just read to
24 you, that it's actually safer to apply them aerially
25 because there's less contact with the machinery, less

1 risk of physical injury.

2 Madam Chair, could I try to turn it right
3 off and if you or anyone else or the reporter is having
4 difficulty hearing me, would that be acceptable for us,
5 you could just let me know.

6 MADAM CHAIR: That's fine, Ms. Cronk.
7 Why don't you turn Mr. Cassidy's on.

8 MS. CRONK: Thank you. The other point
9 that I wanted to make on that was the obvious one
10 perhaps that when you're using ground application
11 methods there is an implication for vegetation
12 disturbance. I talked about it in terms of the
13 implications of moving machinery and people on the
14 ground, and that is more intrusive to the land base, in
15 that sense it carries with it more potential for risk
16 and damage to crop species than is the case when
17 they're aerially applied.

18 And I suggest to you again that what all
19 of that means is that it's impractical, unfeasible, too
20 expensive to do this by way of ground application
21 methods given the extent of the area at issue.

22 I wish to read to you a portion of Mr.
23 Marek's evidence found at Volume 259, first at page
24 46574. He was asked this question:

25 "Would you also agree with me that in

1 order to fulfill those professional
2 responsibilities, professional
3 responsibilities of foresters that you've
4 outlined it's important that foresters on
5 each management unit have available to
6 them a broad range of cost-effective
7 management alternatives for tending and
8 protection measures?"

9 The answer was:

10 "Alternatives as prescribed again and
11 approved in the timber management plan."

12 It was Mr. Marek's view that if they were
13 identified in and approved in the TMP, then in those
14 circumstances the full range contemplated under the
15 plan should be available to managers.

16 And then at the next page, page 46575, he
17 was asked again:

18 "Q. And in doing that...", doing the
19 timber management planning process:

20 "...he the manager should have
21 available to him a range of alternatives
22 that are cost-effective?

23 "A. That's I think a fairly accurate
24 statement.

25 "Q. That's desirable?

1 "A. Yes, desirable. These options are
2 there, they will have to be chosen and
3 implemented."

4 In the same transcript, over at page
5 46579 dealing specifically with aerially applied
6 chemicals Mr. Marek was asked directly about this on
7 several occasions.

8 In this passage the question was:

9 "Assuming for the moment, Mr. Marek,
10 that a specific area is clearly
11 identified for tending, I take it we are
12 agreed that there will be situations
13 where aerial tending of chemicals is
14 appropriate. Let's deal with that
15 question. Do you agree with that?

16 "A. I agree with that."

17 It's at page 46579. He said the same
18 thing at page 46580 and again at pages 46585 to 86.
19 That passage reads as follows:

20 "Q. Let me just see if I have got it
21 at this point. Are you saying that all
22 options should be open as to the
23 appropriate method of application?

24 "A. In certain areas of timber
25 production, in specific areas the

1 forester's got, this is profession, he
2 goes to the public and timber management
3 planning.

4 "Q. Are you saying, sir, that all
5 options should be open in those specially
6 designated areas?

7 "A. All options are open to the
8 forester if approved in proper timber
9 management plan.

10 "Q. Including aerial application of
11 herbicides where appropriate?

12 "A. Again, in specific areas of timber
13 production which is agreed upon, signed
14 and sealed in the timber management
15 plan."

16 So that what he was saying to you was
17 that if an area is identified for timber management
18 where harvesting is going to occur and where tending is
19 identified as an appropriate option and it's approved
20 in the plan, that in those circumstances the aerial
21 spraying of herbicides is an option that should be
22 available to professional foresters.

23 And I suggest to you that is entirely
24 consistent with Mr. Marek's own career experience and
25 his own use of that tending method.

1 Now, it's been suggested in the
2 submissions made by Forests for Tomorrow on this issue,
3 Madam Chair, Mr. Martel, that great weight should be
4 placed on the evidence that you heard from members of
5 the public throughout the course of this hearing on
6 this and other issues.

7 It is important that you consider, as you
8 will, the evidence of other witnesses including the
9 expert witnesses who testified before you, what you
10 were told by members of the public at the satellite
11 hearings and throughout the course of the evidence at
12 this hearing, but I wish to make this very clear on
13 behalf of the OFIA.

14 It would be quite wrong, I respectfully
15 suggest, for it to be intimated or asserted before this
16 Board that there was a groundswell by the public
17 throughout the course of this hearing for a ban on
18 aerial spraying of herbicides. I suggest to you that
19 that was simply not the case. I suggest to you that
20 only a handful of lay witnesses suggested that aerial
21 spraying of herbicides should be banned. Of all of
22 those that we have reviewed from the satellite hearings
23 we could find only two. There may be more, but there
24 are not many.

25 This is not the public clamouring at your

1 door for a ban on aerial spraying of herbicides and I
2 suggest to you that in the absence of any expert
3 evidence suggesting that, tending can efficaciously,
4 practically and economically be achieved in the area of
5 the undertaking by other measures, that FFT's
6 proposition for a ban should be rejected.

7 There's one other aspect in particular of
8 FFT's submissions on the issue of tending and the use
9 of herbicides that I wish to deal with. FFT has
10 suggested in its submissions at paragraph 796 that in
11 the long run softwood, and I should quote this:

12 "In the long run softwood production
13 with spraying is not significantly
14 enhanced over otherwise expected
15 production levels without spraying."

16 And further:

17 "we may be destroying our future crop
18 trees (i.e hardwoods) by the practice of
19 spraying."

20 Those assertions are made at paragraph
21 796 of their written submissions at page 330. And I
22 say to you, Madam Chair, Mr. Martel, that the first
23 assertion is contrary to a considerable amount of
24 evidence that you have received, and that the second
25 assertion is totally unsupported by any evidence before

1 you, and I would like to deal with that.

2 The first suggestion that in the long run
3 softwood production is not enhanced by the use of
4 spraying methods compared to other than spraying method
5 denies, I suggest, all of the evidence that you heard
6 about the efficacy of herbicides when applied aurally.
7 They are dealt with at length in our submissions at
8 pages 273 to 274.

9 You'll remember, for example, that Dr.
10 McCormack in his evidence outlined for you the current
11 state of reported scientific knowledge on growth and
12 yield results achieved from herbicides, whether
13 aerially applied or applied by ground methods, and he
14 indicated, or the evidence indicated that there is
15 evidence, I suggest, of four different types before you
16 on this issue.

17 First, evidence in the form of reported
18 scientific literature relating to efficacy and growth
19 and yield results; secondly, efficacy data supplied by
20 area of the undertaking tending experts from their
21 firsthand observations and experience. I ask you in
22 that regard to consider the Industry case studies,
23 Exhibit 1100; thirdly, the evidence before you from Dr.
24 McCormack regarding his studies in the Austin Pond area
25 in Maine; and, fourthly, evidence from site visits that

1 you made.

2 Dealing with the evidence of efficacy
3 generally, you may recall that Peter Kingsbury a
4 witness who testified on behalf of the MNR with respect
5 to the ESSA group evaluation of environmental effects
6 or potential environmental effects of pesticides
7 indicated that under the Canadian regulatory system,
8 unlike the United States regulatory system, in order to
9 obtain registration of a pesticide, including
10 herbicides, for use in Canada, including in Ontario, it
11 is required that the registrant submit data proving or
12 verifying the efficacy of the product for which
13 registration is proposed at the rates for which
14 registration is being requested. That evidence is
15 found at Volume 124, page 20737.

16 What that means is that in the United
17 States when you apply for registration of a herbicides
18 for timber management uses or any other use you don't
19 have to prove that it's going to work; in Canada you
20 do, it's a registration requirement.

21 It follows from that that the fact of
22 registration itself, without more, is an indicator of
23 efficacy or at least that the regulatory authority in
24 this country charged with the responsibility for the
25 registration of pesticides is satisfied that the

1 efficacy requirement is met. And, in addition to that,
2 you had specific evidence led before you on growth and
3 yield improvements achieved with the use of herbicides.

4 Now, I do not say to you, Madam Chair,
5 Mr. Martel, that all of those studies reviewed in the
6 evidence concern the aerial application of herbicides
7 as distinct from ground application, but I do say to
8 you that they concern the improvement in growth and
9 yield from the use of herbicides as distinct to
10 non-herbicide methods and, in some instances, indeed in
11 many of them, they were specific to aerially applied
12 herbicides.

13 And I'd ask you to consider - I don't
14 propose to go to all of it - there are some 21 or 22
15 reported studies dealt with by Dr. McCormack in his
16 evidence, they are summarized in our written
17 submission, they were more dealt with by Cindy Krishka
18 on behalf of the MNR in her evidence before you, but
19 they're listed, and the growth and yield results are
20 set out in our written submission.

21 But I do ask you to recall, if you will,
22 what Dr. McCormack told you about his Austin Pond
23 studies in Maine, you may remember, and this evidence
24 is found at Volume 206, Madam Chair, Mr. Martel,
25 commencing at page 36700.

1 He told you that Austin Pond is in
2 northcentral Maine, and that Dr. McCormack had
3 personally been involved in every study that has
4 occurred there since 1977 when detailed investigations
5 began.

6 He told you that the purpose of the
7 studies was to do early efficacy testing on two new
8 herbicides, one of them was glyphosate, the other was
9 triclopyr. What they did, I suggest to you, provides
10 the opportunity for particular insight into the
11 efficacy of herbicides because they put triclopyr and
12 glyphosate on experimental blocks directly alongside of
13 2,4-D and other chemical combinations. So it permitted
14 a comparison between the chemicals, but also a
15 comparison between control plots where no herbicides
16 were used and plots where they were used.

17 Dr. McCormack testified that many of the
18 species found in the Austin Pond area are the same
19 competing species that appear in the area of the
20 undertaking. It was his evidence before you that eight
21 years after treatment on the control blocks in the
22 Austin Pond area the treated blocks had developed to a
23 viable forest; in comparison, the untreated block had
24 developed into stands that were not productive, he
25 said, by any standards.

1 There study area is particularly
2 important as well, I suggest, because it was the first
3 study of the aerial application of glyphosate in
4 eastern North America and it was a side by side
5 comparison.

6 Dr. McCormack indicated that the tests
7 conducted at Austin Pond demonstrated superior volume
8 growth for all areas treated with herbicides compared
9 to blocks untreated with herbicides.

10 He concluded on the basis of his own work
11 in the Austin Pond area and on the basis of his
12 familiarity with the area of the undertaking, and he
13 told you that he was and explained why, and his own
14 work over the years in tending, that tending by
15 herbicides show that there is a very distinct benefit
16 in growth response, crop tree stocking, health and
17 vigor, to be gained from the use of herbicides.

18 Now, the way that he detailed that
19 evidence for you, Madam Chair, Mr. Martel, was to
20 review a series of photographs, in part one of the ways
21 he did it, was to review a series of photographs from
22 the Austin Pond study area. They are contained in
23 Exhibit 1134. I'm going to ask you when you come to
24 consider this to relook at a series of these
25 photographs. I propose just to give you the numbers

1 and then ask you this morning just to look at one.

2 If you would look at photographs 13, 14,
3 15, and 36 through 40 and I'm going to ask you this
4 morning to take a look at 36 with me to 37.

5 In photograph 36, Madam Chair, Mr.
6 Martel -- indeed 34, 36 through 40 are all Austin Pond
7 area photographs. Dr. McCormack told you that in
8 photograph 36 the spruce tree from the unsprayed block
9 is on the left and that the spruce tree from the
10 sprayed block was on the right, and he told you that
11 these were average representations of the trees which
12 are side by side on that block on the sprayed and
13 unsprayed areas.

14 You may remember he indicated that the
15 individual in the picture, Dr. Newton, had his hands at
16 the point of the tree indicating the heighth at which
17 treatment was effected. This photograph was taken five
18 years after treatment and the trees are the same age.

19 If you look at photograph 37 -- it was
20 difficult when I went to the transcript, Madam Chair,
21 Mr. Martel, because Dr. McCormack had spent so much
22 time referring to the photographs that it was difficult
23 to do this without looking at the photographs, and
24 that's why I'm asking you to look at it again. But
25 you'll see that in photograph 37 the same kind of

1 comparison is made. This is balsam fir from an
2 untreated block on the left compared to balsam fir
3 treated on the right.

4 Dr. McCormack testified that they were
5 the same heighth at the time of treatment and that this
6 photo was taken five years after treatment, and you'll
7 see them marked differences in both of these.

8 In photo 38 he's showing you the butt
9 ends of the same trees as appear in photo 37. So look
10 at the difference in the end of the two trees between
11 the one that was treated with herbicides and the one
12 that wasn't.

13 What that photograph indicates is the
14 difference in basal area as a result of herbicide
15 treatment compared to a tree of like age and heighth
16 that was untreated in exactly the same area. These are
17 side by side comparisons.

18 And I would ask you to look at
19 photographs 39 and 40 as well. 39 is a glyphosate
20 treated block, the area on the right two thirds of the
21 photo was treated with glyphosate, the left edge is the
22 untreated block.

23 And in photo 40 it's the same area but a
24 closer view, that's Dr. McCormack. It's exactly the
25 same as No. 39 but it's a closer view of Dr. McCormack

1 standing on the ground and it shows that the right side
2 which was sprayed with glyphosate is well stocked five
3 years after treatment, the left side is dominated by
4 species of poor quality.

5 And I ask you to look at all of these
6 photographs, Madam Chair, Mr. Martel, and to note that
7 in those areas sprayed by herbicide competition is
8 still evident, suppression was achieved, not
9 eradication, you can see it in the photographs.

10 Later in his evidence Dr. McCormack
11 engaged in the following exchange.

12 "Dr. McCormack, is there in your
13 opinion sufficient existing data on
14 growth and yield to draw any conclusions
15 regarding the efficacy of herbicide
16 treatments for timber management
17 purposes?"

18 "A. Certainly there are data and I've
19 tried to show some of those here this
20 morning to show that the responses are
21 consistent, the responses are dramatic,
22 they are very positive where herbicide
23 treatments have been properly
24 prescribed and carried out under workable
25 conditions. I personally don't know of

1 any cases where positive responses have
2 not been observed or measured."

3 That was Dr. McCormack's evidence. Now,
4 I started this particular discussion by referring you
5 to a particular portion of Forest for Tomorrow's
6 written submissions in which this issue of superior
7 production was challenged.

8 In the same paragraph it was suggested
9 that by spraying herbicides we might be destroying the
10 crop trees of the future, and I respectfully suggest to
11 you that there's no evidence to support that before
12 this Board whatsoever.

13 The Industry is criticized by Forests for
14 Tomorrow in its written submissions for not knowing the
15 extent to which softwoods and hardwoods will be
16 preferred in the future or what market-driven demands
17 will be, and I say to you that no one can predict what
18 market demands are going to be 100 to 125 years from
19 now. But I suggest to you that the assertion that
20 herbicides destroy is in any event silviculturally
21 inaccurate; they suppress, they don't destroy.

22 But much more importantly, no one gave
23 evidence at this hearing that the market demand for
24 hardwoods is such that over time and in the future we
25 may expect that the desirable crop species to satisfy

1 demand for forest products in this province is going to
2 switch from softwoods to hardwoods. You do not have
3 that evidence, I respectfully suggest, nor any evidence
4 of such a trend, and I suggest to you that if you look
5 at the wood supply evidence that you heard from MNR and
6 Industry witnesses the evidence is exactly the reverse.

7 The next part of the issue, and I spend
8 as much time on this as I do in my submissions, Madam
9 Chair, Mr. Martel, because as I invite you to consider
10 how fundamentally important this issue is to timber
11 managers in the area of the undertaking given the job
12 that they have to carry out. If the aerial spraying of
13 herbicides is denied them, or the use of 2,4-D is
14 denied in the future, managers will not be able to do
15 the job that is assigned to them, and what that
16 translates to is serious negative impact, I suggest, on
17 the potential to achieve the purpose of the undertaking
18 and a very serious problem in terms of the Industry's
19 ability to continue to honour its renewal
20 responsibilities under the FMA program.

21 So if I could deal specifically with the
22 continued need for the use of 2,4-D. FFT, as I
23 indicated earlier, has proposed in its terms and
24 conditions that 2,4-D be used from and after the first
25 anniversary of your approval of the undertaking in this

1 case as a tending treatment of last resort only.

2 I suggest to you that what that proposal
3 really means, if it were to be accepted by you, is that
4 it would result in a restriction on timber managers to
5 the use of only one herbicide in the area of the
6 undertaking for timber management purposes -- for
7 tending, for tending purposes, herbicides. It would
8 have the effect, if accepted, of limiting timber
9 managers to the use not only of one herbicide but a
10 herbicide which could only be applied by a method which
11 is largely ineffective and unfeasible over most of the
12 area of the undertaking.

13 Let me explain what I mean by that.

14 There are now, you have heard, approved for use in
15 timber management in the area of the undertaking five
16 herbicides. When you look at their silvicultural
17 capacities, however, the evidence before you is that
18 three of them simazine, hexazinone, and picloram are of
19 limited utility for tending purposes, they don't do the
20 job; in some cases they don't suppress at all. That
21 means you're down to glyphosate and 2,4-D.

22 FFT ask you to effectively put a ban over
23 time or severe restrictions on the use of 2,4-D. If
24 that's accepted you're down to glyphosate. Then they
25 say: Oh, and by the way, no aerial spraying. So that

1 what you're down to is one herbicide, it's a good one
2 but you can't use it aerially and it can't do
3 everything and it can't address all the competition in
4 the area of the undertaking, and what happens if it
5 becomes no longer available?

6 And I ask you to consider these points
7 established in the evidence. 2,4-D is not an unknown
8 commodity in this jurisdiction. You've heard evidence
9 that it's been in use for over 30 years and that a
10 considerable body of professional forestry expertise
11 has emerged concerning use of this chemical. It's not
12 an unknown chemical property and the people who use it
13 for timber management purposes are not unschooled in
14 its properties and effect. This is not experimental or
15 untested or unproven. I ask you to consider whether it
16 is appropriate from a pure resources planning
17 perspective to limit managers in the face of a clear
18 need for a certain kind of tool, herbicides, to limit
19 them effectively to one only when the evidence before
20 you is that it can't accommodate or address all tending
21 needs. And that's why the Industry and MNR foresters
22 have continued to use 2,4-D since the introduction in
23 1984 of glyphosate, although it's of reduced frequency,
24 there are situations where it still is required.

25 Now, FFT supports, in our respectful

1 submission, supports the suggestion of this ban or last
2 resort over time, treatment of 2,4-D, on the basis of a
3 suggestion of a trend away from the use of chemicals
4 including herbicides, specifically herbicides in the
5 United States, and they point to the Osark Mountains
6 situation, and I've taken you to Exhibit 1236 about
7 that.

8 And I say to you that dependence on
9 herbicides for effective tending in the area of the
10 undertaking is a reality today and that over time,
11 while it may be a laudible objective to move to
12 non-herbicide measures for tending, that can only be
13 done - and this is an extremely important proviso -
14 that can only be done so long as practical, effective
15 alternatives exist, and I suggest to you that that is
16 not the case right now in the area of the undertaking.
17 Manual tending measures cannot replace the use of
18 aerially applied herbicides neither, I suggest, can
19 ground application methods.

20 Now, in addition to the Osark Mountain
21 situation that I've already made mention of, Forests
22 for Tomorrow point to the evidence of Zane Smith
23 concerning the U.S. national forest system in the
24 United States and relies on evidence of Mr. Smith to
25 suggest that there is a trend on those forest lands to

1 move away from the use of 2,4-D. And I ask you to
2 consider the evidence at transcript Volume 300, page
3 53314 to 53317 where it's made clear that only 18 per
4 cent of the nations softwood supply in the United
5 States comes from the national forest, the rest comes
6 from private lands where there's no restriction on the
7 use of 2,4-D.

8 You've heard, for example, from Dr.
9 McCormack of the extensive use of herbicides, including
10 2,4-D, to date in Maine and you've heard in evidence of
11 the features associated in a very real sense with the
12 use of manual tending measures on any scale, you've
13 heard they're very seasonal in nature, that they're
14 very costly, and all of the evidence on this is
15 detailed in our written submissions, but they're very
16 seasonal, it's very costly, it's labour intensive, it
17 requires access to the ground, obviously you have to be
18 able to get there, there's an access implication to it,
19 there's also a site disturbance implication to it that
20 doesn't apply with aerially applied herbicides.

21 All of those features have to be taken
22 into account so that the question can be asked: Is it
23 really practical to say that we can do all of this in
24 the area of the undertaking by manual tending methods.
25 And I suggest to you that the answer clearly is that

1 you can't.

2 It was Dr. McCormack's evidence that he
3 had never encountered a situation where the cost of
4 manual tending was less than the parallel cost of
5 tending with herbicides.

6 It's the evidence before you as available
7 to the Industry that there's a consistent range of
8 costs associated with manual tending of 500, plus or
9 minus \$100 per hectare. In 1988 -- this should be
10 compared to these figures, in 1988 the costs of tending
11 by herbicides were estimated to be \$137 per hectare for
12 2,4-D, and \$202 per hectare for glyphosate. I don't
13 have in my notes, Madam Chair, whether that's ground
14 application or aerial, I'll have to check that for you.
15 And I think these figures very telling.

16 Mr. Galloway testified that in 1987/1988
17 the total cost, the total cost of the chemical tending
18 program in the area of the undertaking was
19 \$6.1-million. That compared to total costs of the
20 manual cleaning program in the sum of \$1.5-million, but
21 what's important about it is that the costs for 84 per
22 cent of the overall cleaning program were associated
23 with herbicides.

24 So, in other words, 84 per cent of all
25 cleaning requirements were carried out for

1 \$6.1-million, it cost \$1.5-million for less than 15 per
2 cent of that program.

3 Mr. Galloway also indicated that in 1986
4 costs of manual cleaning were \$400 per hectare while
5 the cost of chemical cleaning on the ground were \$200-
6 to \$300 per hectare and the cost of aerial cleaning was
7 \$40 per hectare for 2,4-D and \$135 per hectare for
8 glyphosate, they're in 1986 dollars. It shows you what
9 manual was, what ground application was and aerial.
10 Would you like me to repeat them.

11 In 1986 dollars the cost of manual
12 cleaning was \$400 per hectare, chemical cleaning on the
13 ground \$200- to \$300 per hectare, aerial cleaning \$40
14 per hectare for 2,4-D and \$135 per hectare for
15 glyphosate.

16 Now, the third piece of evidence to which
17 FFT pointed, as I read their submissions in support of
18 the assertion of a trend in the United states away from
19 the use of 2,4-D, is reference to the evidence before
20 you concerning - I may be pronouncing this - the
21 Siszlaw Forest in the Pacific northwest.

22 Dr. McCormack was cross-examined on that
23 by Mr. Castrilli and was re-examined by me on the
24 issue. And FFT suggests in its arguments that this is
25 an example of how in areas of the United States there's

1 a move away from the use of herbicides. And the
2 evidence I would like you to consider is this:

3 Mr. Murray Ferguson of the Industry
4 tending panel testified that the area of the Siszlaw
5 Forest is about the size of one forest management
6 agreement area only; secondly, that as a result of the
7 movement away in that forest area from the use of
8 herbicides increased reliance on prescribed burning and
9 on hand slashing had to be undertaken. Mr. Ferguson
10 and Mr. Bunce of the Industry tending panel said that
11 these treatments cannot realistically be applied across
12 the entirety of the area of the undertaking. And I
13 suggest to you that that is just common sense, clearly
14 they can't.

15 And for all of those reasons, Madam
16 Chair, Mr. Martel, I urge you to preserve for the
17 future use in appropriate circumstances only the
18 availability to timber managers of 2,4-D for tending
19 purposes.

20 The other issue associated with it is
21 whether there is before you, or in the scientific
22 community, evidence of potential adverse public health
23 risk associated with the use of 2,4-D or adverse effect
24 on the natural environment. And I'd like to take a few
25 minutes and describe to you our submissions and speak

1 about the evidence that you've heard on the public
2 health issue as it was considerable. And I don't know,
3 therefore, Madam Chair, whether you wish me to embark
4 on that now or whether you wish to take the morning
5 break.

6 MADAM CHAIR: The Board is willing to
7 have its break now, if you would like to do so, Ms.
8 Cronk, or if you're going to be finished within 10
9 minutes we can...

10 MS. CRONK: I won't be, Madam Chair, I
11 can assure that.

12 MADAM CHAIR: All right. Let's take our
13 break now and we'll be back at 10:30.

14 ---Recess at 10:10 a.m.

15 ---On resuming at 10:30 a.m.

16 MADAM CHAIR: Please continue, Ms. Cronk.

17 MS. CRONK: Thank you, Madam Chair, Mr.
18 Martel.

19 To go back to one point, Madam Chair, and
20 that is the cost numbers that I gave you for manual
21 treatments and for glyphosate and 2,4-D treatment by
22 ground and aerial application methods. There are no
23 more current numbers, those were 1986 figures, there
24 are no more current numbers before you in evidence, so
25 far as I'm aware, but I do not wish to be understood as

1 suggesting that the differential between 2,4-D and
2 glyphosate is the same today as it may have been there,
3 I am of course not in the position to give evidence and
4 I do not do so, but I ask you in considering the
5 evidence that you do have about it it's reasonable to
6 assume that the costs of manual tending measures have
7 remained the same, and whether the differential between
8 the costs for the two chemicals have remained the same,
9 there was some evidence before you on that last issue
10 that the differential between the cost of glyphosate
11 and 2,4-D was narrowing during the course of this
12 hearing, and I'm saying to you that there isn't current
13 information that I can point you to on the record about
14 those issues.

15 And I again return to the original
16 submission I made with respect to herbicides and, that
17 is, that it is only FFT among the full-time parties who
18 proposes to you restraints on the use of herbicides in
19 timber management activities in the area of the
20 undertaking.

21 On the public health issue, you heard
22 considerable evidence, you will recall, from Dr. Ritter
23 called on behalf of the MNR, and from Drs. Rachman and
24 Rodricks called on behalf of the OFIA. FFT called no
25 expert on this issue, nor did any other full-time

1 party.

2 We have dealt with this issue, Madam
3 Chair and Mr. Martel, in detail in our written
4 submissions at pages 355 to 391 and I ask you to
5 consider those detailed written submissions because I
6 don't propose to review all of the evidence that is
7 before you because it is considerable on this issue.

8 But I do make this submission to you,
9 that the evidence before the Board establishes that on
10 the basis of current scientific knowledge neither 2,4-D
11 nor glyphosate pose any significant or unacceptable
12 risk to public health.

13 Dr. Ritter confirmed that. He was
14 unequivocal in the evidence that he gave you and he
15 went further to take it beyond the herbicides and said
16 specifically that the current scientific literature and
17 information available to the Department of Health and
18 Welfare Canada does not establish any adverse human
19 health effects from the use of registered pesticides in
20 timber management if they are used properly. That's
21 pesticides which includes, as you know, the
22 insecticides authorized for use in timber management in
23 Ontario.

24 Specific to the herbicides, Dr. Ritter
25 said that he did not have any concerns that there is a

1 significant risk of negative human health effects as a
2 result of exposure to 2,4-D or glyphosate in either the
3 occupational or the environmental exposure setting, and
4 I ask you to consider in particular his evidence at
5 Volume 122 page 20453 to -- I'm sorry.

6 MADAM CHAIR: Would you repeat that
7 please, Ms. Cronk.

8 MS. CRONK: Yes. volume 122, page 20453
9 to 20455 in which I specifically asked Dr. Ritter
10 whether it was his opinion that 2,4-D and glyphosate,
11 if used in timber management, whether it was his
12 opinion that they can be used safely if used in
13 accordance with the procedures authorized by the
14 federal regulatory system and in accordance with the
15 label instructions.

16 Dr. Ritter was not fond of the label safe
17 because he approached it, he explained, as a federal
18 regulator and he talked about it in terms of acceptable
19 and unacceptable risk, and he said that used in those
20 conditions, in those circumstances, they do not pose
21 unacceptable risk and, when pressed on the issue, he
22 acknowledged that the risks associated with the use of
23 those products would fall within a range that most
24 people would consider to be safe for timber management
25 purposes.

1 And I asked him whether that was true of
2 the other pesticides, put that question to a witness
3 who fully understood the breadth of the term pesticides
4 as including chemical insecticides authorized for use
5 in the forestry sector, and I asked him whether that
6 was also true of the other pesticides authorized for
7 use in the forestry sector in Ontario, and he said that
8 based on his knowledge, yes. So you have his very
9 clear evidence on it.

10 Drs. Rodricks and Rachman gave evidence
11 to similar effect and they confirmed that in the United
12 States the Environmental Protection Agency has a range
13 of remedies available to it to modify the terms of
14 existing registrations for pesticides and that those
15 remedies range in severity from modifying the terms of
16 the existing registration as, for example, changing the
17 label requirements, right through to cancellation of
18 the use of the pesticide to, and finally most
19 seriously, to emergency suspension of the use of a
20 pesticide, and they confirmed that all of the
21 herbicides registered and authorized for use in
22 forestry in Ontario continue to be registered for
23 forestry use in the United States through the EPA and
24 that the EPA has not identified any risks with respect
25 to their use in forestry that led them to impose any

1 form of risk mitigation requirement related to human
2 health risks from their use in forestry.

3 Now, they confirmed, they spent a
4 considerable amount of time dealing in their evidence,
5 as did Dr. Ritter, with the suggestion that there is in
6 the scientific literature some indication of a
7 potential cancer risk associated with the use of
8 phenoxy herbicides, that is, 2,4-D, and you received a
9 great many studies about this and heard evidence at
10 great length from all of Drs. Ritter, Rachman and
11 Rodricks on this issue.

12 And this is important, I suggest, Madam
13 Chair, apart from the obvious public health aspect to
14 the issue, because FFT has suggested in its written
15 submissions in several locations that there is what
16 they describe as continuing scientific and regulatory
17 uncertainty surrounding the use of 2,4-D, they talk
18 variously of -- uncertainty concerning the use of
19 2,4-D. They talk about regulatory and scientific
20 confusion, uncertainty, and suggest that that is what
21 the evidence before you demonstrates and because of it
22 its use should be constrained in the future.

23 I suggest to you that given the detailed
24 and comprehensive evidence that you've received from
25 Drs. Ritter, Rachman and Rodricks, in fact it is not

1 appropriate to suggest that there is considerable or
2 indeed even material regulatory uncertainty surrounding
3 the use of 2,4-D or confusion, that that just isn't the
4 case.

5 What is before you is considerable
6 evidence of authorities looking at the issue on a
7 continuing basis of whether there is any reason to fear
8 a causal connection between 2,4-D and a cancer risk in
9 any form, and I suggest to you that that is the prudent
10 response of responsible regulators here and in the
11 United States when such a suggestion is made, and that
12 the evidence you've heard about various studies in the
13 past and to date simply reflect the continuing effort
14 by those regulators to ensure that if there is any
15 demonstrated difficulty they're in a position to act.

16 And, on the evidence before you, it has
17 been established that they have not acted to constrain
18 the use of 2,4-D. In the United States they have not
19 taken any suspension or cancellation measures. While a
20 special review was initially announced in 1986, that
21 decision was reversed by the EPA who reserved its right
22 to initiate it again in the future should it become
23 necessary, there's no evidence before you that they've
24 done so. And I suggest to you that it would be
25 inappropriate to read into continuing work by

1 regulatory authorities on this issue inferentially a
2 conclusion that a causal relationship had been
3 demonstrated, because the evidence before you is
4 exactly to the contrary, specifically to the contrary.

5 Dr. Ritter went so far as to confirm in
6 his evidence that the Department of Health and Welfare
7 Canada gets, prior to publication of scientific papers,
8 the results of the research on 2,4-D and he pointed to
9 one specifically that was available.

10 He testified before you only in abstract
11 form and he said: We get the results of these studies
12 before they're published and we will act
13 pre-publication, that was his evidence, if there's any
14 reason to do so, and there's no evidence before you on
15 the restriction of the use of 2,4-D.

16 Now, as I said, there are a great many
17 studies that have been put before you and they are
18 discussed in our written submissions and they're
19 discussed at length in FFT's written submissions.
20 There's two in particular that I'd ask you to recall
21 and consider. The first was what was called the MOE
22 Panel of Experts Report, that's Exhibit 714, and the
23 second was what was called the Crump Report, and that's
24 Exhibit 716.

25 And with respect to the MOE report, you

1 may remember that was prepared in 1986 by a panel of
2 international experts convened by the Ontario Ministry
3 of the Environment. It was comprised of, in part,
4 persons from Ontario who are recognized leaders in this
5 field, in fact Dr. Ritter, Dr. Rachman, Dr. Rodricks
6 confirmed that the panel was comprised of
7 internationally recognized experts in their respective
8 disciplines. They looked specifically at 2,4-D and the
9 state of scientific knowledge and the reports and the
10 studies that were out there and laboratory data and
11 concluded:

12 "Overall the panel concludes that the
13 existing animal and human data are
14 insufficient to support the findings that
15 2,4-D is a carcinogen and, consequently,
16 finds insufficient evidence to conclude
17 that existing uses of 2,4-D in Ontario
18 poses significant human health risk."

19 And I ask you to take into account that
20 that study was not specific to timber management, they
21 were looking at 2,4-D uses generally. And you've heard
22 that the use of herbicides is much more frequent and at
23 a much higher level in agricultural uses than in
24 forestry uses, for example.

25 Dr. Ritter, Dr. Rachman and Dr. Rodricks

1 confirmed that they reviewed the MOE experts report,
2 they were familiar with its contents, they were
3 familiar with its authors, they viewed it as a
4 comprehensive scientifically reliable document and
5 shared its conclusion.

6 The Crump Report, Exhibit 716, was
7 described by Dr. Rodricks as having been authored by
8 Dr. Crump an internationally recognized expert in
9 chemical risk assessment. Dr. Rodricks in fact said
10 that's kind of an understatement, that Dr. Crump --
11 that it was the work of Dr. Crump in the 1960s and
12 1970s that gave rise to the modern field of risk
13 assessment. And Dr. Ritter said that Dr. Crump was
14 considered to be among the top seven or eight
15 biostatisticians in the world.

16 And that report specifically looked at
17 the use in forestry, this was commissioned in the
18 United States, and it's specifically for the Forest
19 Land Management Division of the Department of Natural
20 Resources, and it specifically looked at the use of
21 seven aerially applied herbicides, and I emphasize
22 aerially applied because that's an issue alive before
23 you, and that report concluded, reviewing all of again
24 the studies, the material available, that even under
25 ultra conservative approach of risk assessment there

1 are significant margins of safety for the use for
2 forestry purposes of 2,4-D, glyphosate and picloram,
3 those are the three herbicides authorized here that
4 they looked at.

5 Dr. Ritter in his evidence confirmed that
6 the degree of risk and quantified in the Crump Report
7 for either 2,4-D or glyphosate was negligible in the
8 context of risks to which members of the general public
9 are routinely exposed in daily life.

10 Dr. Rodricks and Rachman endorsed the
11 conclusion in the Crump Report and told you that it
12 conformed in every respect to currently accepted
13 scientific criteria for the conduct of risk assessments
14 and the report was done correctly, they said, it's
15 reliable, it was done by the best and we agree with it.

16 I suggest that what this evidence
17 establishes is what Dr. Ritter repeatedly indicated in
18 his evidence, that the use of the herbicides authorized
19 for forestry use in Ontario do not pose an unacceptable
20 health risk, that they can be used safely.

21 One of the matters of concern to the
22 Industry set out in Forests for Tomorrow's written
23 submissions to you, Madam Chair, is an assertion
24 contained in paragraph 884 at page 367 relating to Dr.
25 Rachman.

1 In that paragraph FFT has said with
2 respect to Dr. Rachman's evidence-in-chief that she
3 came to the Board:

4 "...with only half a loaf respecting
5 the regulatory status of 2,4-D in the
6 United States, that she focused on the
7 U.S. EPA but told this Board nothing
8 about the product's status under the U.S.
9 national forest system."

10 If that submission, Madam Chair, Mr.
11 Martel, is intended to suggest that Dr. Rachman was
12 less than forthcoming in her evidence before you or
13 sought in some way by virtue of omission, by failure to
14 mention something, to mislead you in any way, then I
15 reject that assertion in the strongest of terms and
16 urge you to do so as well.

17 I suggest to you, respectfully, that
18 nothing could be further from the truth and that Dr.
19 Rachman in her evidence outlined in considerable detail
20 what the regulatory system was in the United States for
21 the regulation of pesticides and explained in the
22 course of her evidence the role of the EPA, the role of
23 the U.S. Forest Service and made it quite clear that no
24 pesticide could be used in the United States unless it
25 has been registered by the EPA, and that the EPA, like

1 all other federal agencies in that jurisdiction, is
2 subject to the National Environmental Policy Act - and
3 she referred to that in her written witness statement -
4 and that in the case of a specific forest management
5 program in the United States, environmental impact
6 statements are prepared that may involve comparing the
7 various pesticides that might be used, but all of them
8 have to be EPA registered and all of the ones that are
9 used here have been found by the EPA to meet the
10 general 'no reasonable adverse effects standard' under
11 American regulatory statutes.

12 I suggest to you that the fact that the
13 Forest Service in the United States may have decided in
14 particular areas, as for example the Osark Mountains,
15 the Siszlaw Forest, not to use 2,4-D in a particular
16 management program has absolutely no bearing on its
17 regulatory status in the United States, that's governed
18 by the EPA.

19 And I've already suggested to you that
20 the circumstances applicable in those examples in the
21 United States, the Osark Mountain area, the area of the
22 Siszlaw Forest pointed to by Forests for Tomorrow, are
23 vastly different than the situation we are dealing with
24 here in the area of the undertaking, certainly in size
25 of geographical extent and, therefore, the

1 practicability of using non-herbicide options.

2 And I suggest to you further that it's
3 not surprising that U.S. and Canadian authorities
4 continue to look at the issue of 2,4-D on an evolving
5 basis and that's been confirmed in the evidence before
6 you. All that confirms, I suggest, in the evidence
7 that you've received is that the continuing regulatory
8 position of the U.S. and Canada reflects and is
9 justified by the scientific conclusion that the
10 accumulated evidence does not establish a causal
11 relationship between 2,4-D and any cancer risk.

12 And I respectfully ask you to consider
13 and accept that Dr. Rachman and Dr. Rodricks, in
14 particular Dr. Rachman, gave their evidence before you
15 in a forthright and comprehensive and professional way
16 and that they were direct, clear, and came to assist in
17 describing the U.S. regulatory system and to express
18 their professional opinions to you on the state of the
19 scientific studies that had been conducted here and I
20 invite you to accept their evidence and to rely upon
21 it.

22 And I propose to turn now to the subject
23 of protection and, of course, to the issue of chemical
24 insecticides as opposed to herbicides and to the issue
25 of the need for protection of the timber resource.

1 Our submissions with respect to these
2 issues are found at pages 277 to 300 of our written
3 brief. Again, they're quite detailed and I don't
4 propose to review them in detail, but I start again
5 with this submission: That in this hearing on the
6 evidence that you have the need for protection of the
7 timber resource is not an issue, no one's denied it.

8 It's been demonstrated to you that
9 unplanned insect and disease depletions can have a very
10 material adverse impact on wood supply, and I ask you
11 to consider the evidence of Mr. Churcher for the MNR in
12 that regard and Dr. Roderick Carrow on behalf of the
13 Industry.

14 So I say again, that need for protection
15 is not an issue, what is an issue is the methodology to
16 be open to timber managers to carry out protection
17 activities and the techniques that should be available
18 to them in the future.

19 And the issue before you on chemical
20 insecticides as one form of method of protecting the
21 timber resource should be contrasted to the position on
22 herbicides, because on the issue of chemical
23 insecticides you have FFT saying in its written
24 submissions to you that they should not be used in any
25 circumstance at all, and you have the Ministry of the

1 Environment saying that non-chemical alternatives
2 should be looked to first and, where effective, should
3 be used first, and we have as well the fact, the fact
4 of what has occurred with respect to the use of
5 chemical insecticides in Ontario since 1985. That's
6 different than the issue before you on herbicides.

7 The position of the OFIA can be
8 summarized in four items. First, that MNR's existing
9 policy on insect control, it's policy No. FRI04-10-01
10 FRI04-10-01, that is an MNR policy concerning insect
11 control, you'll remember, is appropriate and should be
12 affirmed by the Board, specifically because it focuses
13 as a priority on early intervention to achieve control
14 of insect outbreak. Early intervention is the concept
15 supported by the Industry and that is reflected in that
16 policy.

17 Secondly, in our submission, there is a
18 need for the development of appropriate effectiveness
19 standards for the MNR's foliage protection program so
20 that assessment and evaluation can be made in the
21 future of how effective it is.

22 Thirdly, that there is a continuing need
23 to use chemical insecticides in appropriate
24 circumstances in timber management for protection
25 activities and that their general use and that their

1 use as a general proposition should not be excluded by
2 the Ministry of Natural Resources.

3 It follows from that, we suggest, that
4 the existing policy, practice, approach in Ontario,
5 whatever in the end you are persuaded is the proper
6 descriptive for it, should be altered so as to make it
7 clear that insofar as the Ministry of Natural Resources
8 is concerned the use of chemical insecticides is an
9 available option in appropriate circumstances for
10 protection.

11 I propose to briefly speak to each of
12 those submissions to you.

13 First on the issue of the appropriateness
14 of MNR's existing insect control policy. As I
15 indicated, that policy differentiates between outbreak
16 control in respect of insect infestation, outbreak
17 containment and foliage protection, and under the
18 policy the preferred strategy identified for insect
19 control on Crown lands is one of, "early intervention";
20 that is, outbreak control first followed by containment
21 and then eventually by protection spraying.

22 And all that means, Madam Chair, Mr.
23 Martel, if I may suggest from a non-entomologist point
24 of view, is that outbreak control, once it's happening,
25 get in there fast so you don't have to contain it later

1 and save the foliage, get in at the first stage as soon
2 as you can. And that's been articulated as the
3 management strategy in the policy, it's called early
4 intervention, and that is the concept and the principle
5 that the Industry supports.

6 Dr. Carrow testified before you that that
7 was the appropriate approach and that the policy should
8 be affirmed to ensure that it is clear that this Board
9 regards outbreak control, outbreak containment and
10 foliage protection as appropriate objectives of the MNR
11 in its protection program in that order of priority and
12 what Dr. Carrow really said to you was, I suggest,
13 there's a policy in place by the MNR - you'll remember
14 that Dr. Carrow gave you evidence that he had assisted
15 in drafting it - that there's a policy now of the MNR
16 in place, this is what it says and this Board, given
17 the issues you're dealing with, should confirm its
18 appropriateness.

19 On the need for effectiveness standards,
20 which was the second submission that I made to you,
21 Madam Chair, Mr. Martel, that area of the evidence
22 concerns the issue that emerged between the MNR on the
23 one side and Industry on the other as to whether there
24 should be articulated standards that apply for foliage
25 protection to assist in the evaluation of whether the

1 MNR's protection program is working well enough in the
2 future and at what level of success or failure.

3 And there was a debate - and, again, as
4 you'll appreciate, my effort is to provide our
5 submission to you in a summary way without reviewing
6 all of the evidence - but there was a debate with
7 several witnesses, specifically Mr. Churcher, and then
8 there's evidence from Dr. Carrow on it as well as to
9 whether it was appropriate to develop numerical
10 standards in the form or a form similar to what has
11 occurred in Quebec or in a form similar to what has
12 occurred in New Brunswick because benchmark standards
13 in a numerical or quantified way have been developed in
14 each of those provinces, although they're different
15 from each other, whether that was appropriate or
16 possible or practical.

17 That was an issue that emerged in the
18 evidence before you and it was Dr. Carrow's evidence,
19 which I ask you to consider and adopt, that appropriate
20 research should be undertaken in Ontario to establish
21 appropriate standards for Ontario forestry conditions,
22 recognizing that the standards chosen in other
23 provinces may not be appropriate here.

24 He was simply saying, at the end of the
25 day, that it's not good enough not to have an

1 articulated standard or range of standard at all
2 because there's too much investment in this program and
3 what's at stake is too important to not be able to
4 measure it, measure it and evaluate it by
5 pre-articulated standards or benchmarks.

6 And the OFIA has proposed a specific
7 condition to you that would require, if approved by
8 you, that would require the MNR to do that. The
9 condition doesn't purport to tell them how to do it or
10 to suggest that there should be only one benchmark or
11 to suggest that the benchmarks from other provinces
12 should be adopted for here, it would simply require
13 those benchmarks to be developed and appropriate
14 analysis done to ensure that they are.

15 The third issue, Madam Chair, Mr. Martel,
16 concerns the need for the use of chemical insecticides,
17 and I ask you to consider - although I don't propose it
18 in detail - the evidence of Dr. Carrow before you as to
19 why that need exists. That evidence in part is found
20 in Volume 209, pages 37559 and following, and I suggest
21 to you simply that in those situations where there's no
22 available effective biological control agents, where
23 B.t. won't work, where loconte virus won't work, that
24 there's no alternative except chemical insecticides and
25 that Dr. Carrow established in evidence before you that

1 there are a large number of major forest pests active
2 in the area of the undertaking in respect of which
3 there is no effective non-chemical insecticide
4 available.

5 I don't propose, Madam Chair, Mr. Martel,
6 to spend any time speaking about the issue of the
7 practice or policy or approach in the province since
8 1985, save only to say that there was an issue at one
9 point in the hearing as to whether it was a formal
10 policy of the government as a whole or a formal
11 practice of the Minister of Natural Resources that
12 chemical insecticides should not be used.

13 And I say to you now at the end of the
14 hearing that the label doesn't much matter, in our
15 respectful submission, that the fact is that since 1985
16 they haven't been used, that it's clear by statements
17 made by the then Minister of Natural Resources in 1989
18 in the House that it was the policy -- that he regarded
19 it as the policy of his Ministry that chemical
20 insecticides not be used - he used that language,
21 policy - and I ask you to consider from the broad
22 perspective of appropriate resource management whether
23 we should have so many of our eggs in one basket for
24 protection when we might need a second tool that's been
25 proven to work, and that is the only thing that does

1 work for certain kinds of insects.

2 And for that reason we have asked you to
3 consider conditions No. 63(c) and 63(c) in the
4 Industry's proposed conditions which speak specifically
5 to this issue, which are designed to ensure that the
6 use of chemical insecticides for timber management in
7 the area of the undertaking is permitted in the future
8 in appropriate circumstances for protection and that,
9 as a general policy matter, or as a general practice,
10 there should not be a constraint, prohibition, ban on
11 the use of chemical insecticides for protection
12 purposes.

13 I have referred you already, and you will
14 remember, to the evidence of Mr. Marek that spoke to
15 the issue of pesticides generally and the need to have
16 available to timber managers in areas where timber
17 management activities are approved a whole range of
18 options, and you'll remember that I pointed out that
19 the questions put to him specifically dealt with
20 tending and protection, not just tending, and I pointed
21 out to you the evidence of Dr. Ritter with respect to
22 pesticides, not just herbicides, pesticides registered
23 for use in timber management in Ontario, that there was
24 no significant health risk in his view.

25 Now, in FFT's written submissions to you

1 there is detailed discussion of the evidence before you
2 concerning the potential for environmental effects -
3 environmental effects, I'm distinguishing now from
4 health effects - environmental effects from the use of
5 chemical insecticides and also from the use of 2,4-D
6 and our submissions to you on that issue, again, are
7 going to be very brief. I ask you to look at the
8 detailed submissions contained in our brief to you.

9 But we start from the proposition of the
10 frequency of use of herbicides and chemical
11 insecticides and ask you to recall what the evidence is
12 on that issue and to recall as well that both Mr.
13 Gordon Craig and Mr. Peter Kingsbury confirmed in
14 evidence before you, based on their review of the
15 scientific studies, that the use in Ontario for timber
16 management purposes of the pesticides currently
17 registered and authorized for use do not pose an
18 unacceptable risk of environmental disturbance.

19 Much is made in the FFT submissions, I
20 suggest, of a study by Weeks et al, that's W-e-e-k-s,
21 the Weeks Study, it's Exhibit 1233, and of Mr. Craig's
22 evidence in respect of it.

23 And you may remember, Madam Chair, Mr.
24 Martel, that that was a study that looked at various
25 exposure situations for the use of pesticides under

1 various rates of application and there was extensive
2 cross-examination of Mr. Craig on this report,
3 including cross-examination by Mr. Freidin which
4 followed on the cross-examination by Mr. Castrilli, and
5 I ask you to consider when you come to that report and
6 what it said and FFT's submissions about it, that Mr.
7 Craig testified that the rates of application referred
8 to in the Weeks study for pesticides, for the
9 pesticides under discussion which led to the
10 documenting of some negative environmental effects,
11 were rates of application that were far in excess of
12 the doses, the realistic doses used here in Ontario,
13 and that it was Mr. Craig's view that taking into
14 account the rates that are used here, he, like Mr.
15 Kingsbury, felt there were no unacceptable risks of
16 environmental harm from the use of these pesticides.
17 And both were quick to follow on that by saying that
18 that's because there are mitigation/minimization
19 measures that can and are taken in respect of such
20 effects.

21 And I suggest to you at the end of the
22 day when you weigh through all of the evidence that you
23 heard on this issue and when you look at the whole
24 environmental effects evidence as distinct from the
25 public health effects evidence which consists of, if

1 you'll remember, the evidence from Mr. Kingsbury and
2 others about the ESSA report and the evidence from Mr.
3 Craig, Mr. Eedy and Mr. Schieffer of Beak Consultants
4 before you on their review of the studies concerning
5 environmental effects, that it has been demonstrated
6 that these pesticides, and I say pesticides
7 deliberately, including 2,4-D, including the chemical
8 insecticides authorized or registered for use in
9 Ontario can be used without unacceptable risk or
10 environmental harm when regard is had and enforcement
11 undertaken of mitigation and minimization measures
12 identified before you and, in the end, I don't think,
13 is my respectful submission, it gets more complicated
14 than that.

15 There are two further matters that I
16 propose to deal with, Madam Chair, Mr. Martel, before
17 Mr. Cassidy outlines our submissions to you with
18 respect to planning, and they are to come back to the
19 issue of harvest and to deal with full-tree harvesting
20 and what the position of the Industry is on that, and
21 then very briefly to respond to an inquiry from the
22 Board earlier this week about the position of the
23 parties on the null alternative issue.

24 And if I can deal first with the last
25 issue. You have received our submission yesterday on

1 the issue of clearcutting made by Forests for Tomorrow
2 in condition 29. I think generally with respect to
3 harvesting issues it can fairly be said that everyone,
4 that is, the major parties to this hearing, agree that
5 harvesting is necessary and must be allowed.

6 What's really in issue before you is
7 full-tree harvesting with associated issues regarding
8 nutrient depletion; clearcutting, and even then in the
9 clearcutting sense context size of clearcuts, not
10 clearcutting per se, but size of clearcuts; and,
11 thirdly, harvest planning issues which Mr. Cassidy will
12 address.

13 On the full-tree harvesting issue it's my
14 respectful submission to you that that the MOE takes
15 the view that the broad-scale application of full-tree
16 harvesting has the potential for degrading sensitive
17 parts of the land base and extending the duration of
18 negative aquatic effects of logging, and I take that
19 right from their written submissions to you at page 59.
20 That's the MOE's position in their written submissions
21 to you.

22 FFT takes essentially the same position
23 and that leads them to say to you from an abundance of
24 caution full-tree harvesting should be severely
25 restricted based on one measurement, soil depth.

1 It's our position, Madam Chair, Mr.
2 Martel, that there's no reliable scientific evidence
3 before this Board which warrants restrictions on
4 full-tree harvesting. There is evidence which suggests
5 that it should be studied. The Industry agrees with
6 that and has specifically supported it in our proposed
7 term and condition No. 85.

8 But we suggest to you that it is
9 unnecessary and unwarranted, on the evidence before
10 you, to take the extreme step at this stage of severely
11 restricting full-tree harvesting in the absence of
12 reliable scientific evidence which clearly demonstrates
13 the necessity for doing so.

14 This is a classic example, in my
15 respectful submission, Mr. Martel, of the use of
16 cautionary planning principles.

17 On the one hand you have the school of
18 thought advanced in this hearing on this issue by the
19 MOE and by FFT that if it looks like there might be a
20 problem, out of an abundance of caution stop it until
21 we know. On the other hand you have from the
22 Industry's perspective the proposition that you don't
23 unduly restrict the ability to produce what you need
24 unless you know there's a problem.

25 And I suggest to you further that this

1 whole issue reduces itself - because you've heard,
2 again, a great deal of evidence about this issue, there
3 are any number of papers and studies before you - but I
4 suggest to you this whole issue reduces itself at the
5 end of the day to the reliability and the implications
6 of one scientific paper, the Timmer, Marek, Savinsky
7 paper, Exhibit 416A, which is part of MNR's Panel 10 on
8 harvesting.

9 And we suggest to you that what's in that
10 paper is of limited application, that according to its
11 own authors on the face of the report it can't be given
12 broad application, and what all of this means, I
13 suggest, is that there has been a signal of concern, an
14 indication of concern based on the Timmer, Marek,
15 Savinsky paper, concerns expressed by others who
16 haven't actually studied the issue but who have
17 conducted literature reviews about full-tree
18 harvesting, and that the central issue is: What is the
19 proper resource management approach to a signal of such
20 concern when the reliability and the extent of the
21 concern have not yet been demonstrated.

22 And I say to you, Madam Chair, Mr.
23 Martel, that it should be studied, that's what the
24 Industry's conditions propose, but you don't fix it
25 until you know it's broken.

1 And I would like to deal with the issue
2 that the parameter which should govern the availability
3 of the full-tree harvesting option is soil depth. The
4 evidence before this Board, I suggest, as confirmed by
5 Mr. Marek, is that many shallow soil sites can be
6 highly productive and that many deep sites can be
7 extremely unstable sites and that it varies from site
8 to site. You can't make, I suggest, generalizations
9 about the productivity of shallow soil sites.

10 I suggest to you that it's also the
11 evidence before you that there's no logical
12 relationship, as a general proposition, between soil
13 depth and soil productivity, and the reason I make
14 these submissions to you is because the MOE has
15 proposed in its terms and conditions, in particular
16 term and condition 21, that no full-tree harvesting
17 should be allowed on what they call very shallow or
18 shallow sites or sites otherwise susceptible to
19 nutrient depletion.

20 They recognize that exceptions under
21 their conditions would be permitted on determination of
22 nutrient status of the site and the potential impacts
23 of the site productivity, but it's fundamentally based
24 on one criteria, soil depth. And I suggest to you that
25 the evidence before you from the expert professional

1 foresters is that you can't make generalizations of
2 that kind because shallow soiled sites can in fact be
3 nutrient rich and highly productive.

4 Forests for Tomorrow at page 182 of their
5 submissions, paragraphs 401 and 402 suggest that Dr. Ian
6 Methven, a witness called by the OFIA, in a paper
7 written in 1979 expressed concern about the nutrient
8 effects of full-tree logging. I suggest to you that
9 that is not an accurate characterization of the purpose
10 and results reported on in that paper. Page 1 --
11 sorry, the actual paper is Exhibit 1421. Page 1 of the
12 paper makes it clear that the paper dealt with
13 full-tree removal over short rotations of two to 10
14 years for energy purposes. It had nothing to do with
15 full-tree removal in the context of normal timber
16 management harvesting operations over a full rotation.
17 It was intensified, accelerated removal over a short
18 rotation of two to 20 years.

19 The paper was filed by the OFIA to show
20 that the amount of nutrient inputs from the atmosphere,
21 as detailed at page 4 of the study, had not been
22 sufficiently or adequately taken into account in the
23 Timmer, Marek, Savinsky report.

24 So in the end, Madam Chair, Mr. Martel,
25 it is our submission to you with respect to full-tree

1 harvesting that in the absence of reliable scientific
2 studies or evidence before you to the contrary, there's
3 no credible concern about the effects of full-tree
4 harvesting in the area of the undertaking sufficient to
5 warrant today restriction on its use pending the
6 completion of further studies.

7 Now, we respectfully submit that the
8 Board should order that the MNR design and implement a
9 study pertaining to the effects of full-tree harvest on
10 long-term forest productivity and nutrient depletion in
11 the manner suggested by our terms and conditions.

12 Madam Chair, I propose very briefly to
13 outline our submissions to you concerning the issue
14 focused on the null alternative.

15 As you know, the undertaking in this
16 case, if approved by you and subject to whatever
17 conditions you impose, will be carried out over
18 approximately a hundred management units throughout the
19 area of the undertaking. It will be carried out
20 subject to the conditions you impose to achieve a
21 particular purpose, that's the purpose defined by the
22 proponent, and that purpose, I suggest, extends quite
23 clearly - and it's important to recall in this
24 discussion that it extends quite clearly beyond any
25 particular management unit or any particular subset of

1 management units - that it's a purpose that is
2 provincially defined across the area of the
3 undertaking.

4 I suggest to you that the undertaking has
5 a provincial purpose, therefore, that it is provincial
6 in scope and that it's to be implemented at a scale
7 which encompasses the entirety of the area of the
8 undertaking. It is to be carried out to achieve
9 provincially defined goals, that's what the purpose of
10 the undertaking is. Individual management units in
11 that context, I suggest, can't be treated as entities
12 onto themselves.

13 Mr. Freidin in dealing with this issue in
14 his submissions earlier this week indicated that the
15 MNR believes that it's unnecessary at the level of each
16 management unit to have to do an analysis of either the
17 need or the null alternative at the local planning
18 level when both of these issues have been dealt with in
19 this class EA, and he confirmed that it was also the
20 MNR's position that the undertaking before this Board
21 is not confined to one or more management units, but
22 that it is a provincial level undertaking.

23 We support and endorse that submission,
24 that by definition is what the undertaking is, we
25 suggest before you, and that is why the need for the

1 undertaking and the null alternative have been dealt
2 with before you in this class environmental assessment.

3 The MNR as proponent indicated through
4 Mr. Freidin that it's precisely because of that that a
5 class EA approach was adopted so that it could deal in
6 this very special case about a province-wide defined
7 purpose to assure future fiber supply, because that's
8 the whole reason the class EA approach was undertaken,
9 I understand, in this case.

10 It may be undertaken in other cases for
11 other purposes specific to more narrowly defined
12 activities, plans or programs, but in this case the
13 statute permitted the class EA approach for this kind
14 of an undertaking and that's why it was undertaken.

15 He also suggested to you that it makes
16 little sense and would serve no public interest to have
17 the need and the null alternative reconsidered at each
18 management unit, at the management unit level for each
19 unit over time in the future.

20 I cannot stress too strongly, Madam
21 Chair, Mr. Martel, the vigor of the Industry's support
22 for that submission. It is our respectful submission
23 that it makes absolutely no practical sense, from the
24 view of the public interest and the practicality of
25 planning at the unit level, to be re-examining need or

1 the null alternative repeatedly in each and every plan
2 in each and every unit for the lifespan of your
3 approval of this undertaking.

4 That, with the greatest of respect, we
5 suggest would be totally redundant, it's unnecessary,
6 and it calls very basically into question the entire
7 purpose of a class EA of this kind.

8 And I say that, Mr. Martel, Madam Chair
9 from the perspective of the Industry, like everyone
10 else in this room, who have been involved in this
11 process for four years, it is incomprehensible to our
12 clients that further evidence on this kind of issue,
13 need and the null alternative, could have been brought
14 before you without being repetitive. You've heard it
15 all, and to suggest that at the individual unit level
16 this is going to be embarked upon again, I say with
17 respect, makes no sense and serves no valid public
18 interest or purpose.

19 I also ask you to consider the
20 consequences if the approach were adopted, apart from
21 its merit. Because this undertaking has a provincial
22 purpose and is provincial in scope and scale, I've
23 suggested to you that each management unit cannot be
24 regarded as an entity onto itself. Were it otherwise
25 it is at least theoretically possible that at each unit

1 when these issues were considered at the unit level a
2 decision could be made that no timber management
3 activities would be undertaken. So that there would be
4 no contribution at any level to the future wood supply
5 by that unit or units.

6 Were that to occur at a provincially
7 uncoordinated provincial basis, which is what falls out
8 from this suggestion, I suggest to you that you can't
9 be assured at all that the purpose of the undertaking
10 would be achieved. With this kind of an undertaking,
11 each of the constituent parts are part of the whole and
12 the purpose of the undertaking is a purpose for the
13 whole. To invest, I suggest, that level of autonomy
14 and that kind of opting out potential at each unit
15 level could undermine the entire purpose of the
16 undertaking.

17 I suggest to you that each timber
18 management unit on this issue cannot be regarded as
19 distinct onto itself empowered to act by adoption of
20 the null alternative without regard to the needs of the
21 area of the undertaking as a whole and, hence, to the
22 needs of the province as a whole.

23 If that were the case, Madam Chair, Mr.
24 Martel, the issues developed in this hearing and the
25 battle fought to the extent that issue was drawn would

1 have been fought at each management unit level not at
2 this table for the last four years. And I respectfully
3 suggest to you that the class EA approach in this case
4 was adopted for a reason, and in light of the purpose
5 of this undertaking, and to invite repetition at the
6 individual management unit level of that kind of a
7 debate, that kind of analysis is unnecessary,
8 inconsistent with the concept of a class EA in this
9 case and would serve no practical or public purpose.

10 Madam Chair, Mr. Cassidy will deal next
11 with our submissions regarding planning and a number of
12 other matters. Is it your wish that he commences now
13 before the luncheon break, which he's certainly
14 prepared to do.

15 I know that he would prefer that his
16 submissions regarding planning not be interrupted, if
17 that's possible, but there are about an hour to an hour
18 and 20 minutes on planning, but there are some other
19 minor issues, minor not in importance minor in time -
20 hard to say, at least one - that might be dealt with
21 before noon.

22 MADAM CHAIR: Well, if Mr. Cassidy
23 prefers to return after lunch, return at one o'clock,
24 the Board would be willing to do that.

25 MR. CASSIDY: That's fine, Madam Chair.

1 And in those circumstances I believe that we could
2 finish before the afternoon break, if I had that period
3 of time.

4 MADAM CHAIR: All right. Thank you very
5 much, Mr. Cassidy. Ms. Cronk, thank you very much.

6 MS. CRONK: Thank you. You may yet hear
7 from me again at the end of the planning submissions on
8 something else. Thank you very much.

9 ---Luncheon recess at 11:35 a.m.

10 ---On resuming at 1:00 p.m.

11 MADAM CHAIR: Good afternoon, Mr.
12 Cassidy.

13 MR. CASSIDY: Good afternoon, Madam
14 Chair, Mr. Martel.

15 MADAM CHAIR: Please continue.

16 MR. CASSIDY: The jokes are already
17 starting with the lecturn being too low for me, Madam
18 Chair.

19 Madam Chair, Mr. Martel, I am here, as
20 Ms. Cronk indicated, to discuss with you this afternoon
21 some of the planning issues that have occurred over the
22 course of the four and a half years we have been
23 together in this hearing.

24 I think it is an insight into the obvious
25 to suggest that you have received a variety of planning

1 proposals from parties in this hearing and the shear
2 size of the details surrounding all of these planning
3 concepts proposed by the other parties does not allow
4 me to conduct an in depth discussion with you here
5 today.

6 A detailed discussion of our client's
7 proposals regarding planning is contained in Volume 2
8 of our written submissions and can be found at the
9 first 43 pages of that volume behind Tab 2.

10 I can indicate that the the OFIA relies
11 on the submissions contained in those pages in support
12 of its planning proposals and I commend them to you.

13 In particular the OFIA relies on the
14 evidence summarized in the submissions from the very
15 experienced expert planners who appeared before you and
16 gave evidence on behalf of the OFIA. Among them and to
17 my right, Mr. Dale Munro, Mr. Michael Innis, Mr. Len
18 Suomo, Mr. Dick Fry and not to forget Mr. Wayne Young
19 who is sitting behind me in the tenth panel of evidence
20 from the OFIA.

21 I respectfully submit that when you come
22 to write your decision you give strong consideration to
23 the many years of experience that these witnesses have
24 in timber management planning in the area of the
25 undertaking, particularly in comparison to - and I mean

1 this with no disrespect to any of the other witnesses -
2 but particularly in comparison to the timber management
3 planning experience proposed by the witnesses from the
4 Ministry of the Environment, from Forests for Tomorrow
5 and from the Federation of Anglers and Hunters/NOTOA
6 coalition.

7 For example, Ms. Dahl was not qualified
8 as an expert in timber management planning, rather in a
9 environmental planning assessment.

10 I respectfully submit that none of these
11 other parties led evidence from witnesses with the
12 length and breadth of actual timber management planning
13 experience as is possessed by the OFIA planning witness
14 I just enumerated and whose evidence you will recall.

15 Having said those general comments, Madam
16 Chair, Mr. Martel, I can indicate that the thrust of my
17 submissions this afternoon could be divided into seven
18 topics and I will first list those topics and then I
19 will discuss each one with you.

20 I will be discussing, first, issues
21 relating to public consultation; the second issue I
22 will be dealing with is a discussion of the agreements
23 that have been reached to date with respect to certain
24 planning issues among the parties by way of proposed
25 terms and conditions to recommend to you; third, I will

1 be dealing with planning and access harvest issues in
2 relation to the proposals to set out alternatives for
3 access and harvest matters.

4 Fourth, I will deal with the
5 documentation of treatment packages and what I might
6 put in parenthetically described as the paper exercise
7 and you will be hearing me talk about that; fifth, I
8 will be dealing with other access planning issues other
9 than the ones being dealt with in relation to the
10 alternative proposals; sixth, I will have a comment on
11 the American planning system and the suggested
12 importation of it into Ontario that some parties have
13 recommended to you; and seventh and finally, I will
14 deal with the the concept of affordability in planning,
15 timber management planning, which is discussed in the
16 final submissions and I wish to finish with some
17 comments in respect to that very important issue from
18 our client's perspective.

19 If I can deal then first with the first
20 issue of public consultation which is just by its title
21 a very broad topic, there are four main points that the
22 Industry believes the Board should consider when
23 deciding on its terms and conditions.

24 The OFIA believes that public
25 consultation must, one, occur early in the planning

1 process; No. 2, public consultation must be ongoing;
2 No. 3, it must be meaningful; and 4, it must occur at
3 more than one level.

4 Those aren't just platitudes, Madam
5 Chair, those are vital cogs in the Industry's terms and
6 conditions which are reflected in the terms and
7 conditions which I will be discussing in the next few
8 minutes.

9 The Industry's terms and conditions seem
10 to accomplish these objectives and we, in fact, believe
11 that a number of parties now subscribe at the end of
12 the day to the importance of these goals along with us.

13 I want to emphasize a few other points
14 related to the issue of public consultation. It used
15 to be thought, and I think I am on safe ground to say,
16 at the commencement of this hearing and before that the
17 open houses or information centres which you heard a
18 lot of evidence, both from expert planners and from lay
19 witnesses across the province, it used to be thought
20 that those open houses or information centres were a
21 principal means of obtaining public input into plans.
22 Almost as if they were the principal means.

23 It is the view of the OFIA that that
24 situation can no longer and should no longer be the
25 case.

1 The information centres proposed in the
2 terms and conditions by the OFIA, and we believe
3 hopefully with the agreement of the other parties to
4 recommend to you, are in the OFIA's view a means to get
5 input, a very important means to get input, but they
6 should not be viewed as the principal means of
7 obtaining public input, that meaningful, early and
8 ongoing public input that the OFIA believes is so
9 important to effective timber management planning.

10 Instead, Madam Chair, Mr. Martel, the
11 OFIA believes that the main mechanisms but not
12 exclusive, but main mechanisms for obtaining public
13 input should be the use of personal, direct contacts
14 with individual and/or groups and the people involved
15 in timber management planning and the use of local
16 citizens' committee and other structures at other
17 levels for public input.

18 The information centres, which is what
19 they were called in the the proposed terms and
20 conditions from the major parties as a result of
21 negotiations, one might call them open houses, those
22 centres will compliment these input opportunities
23 acting hopefully as a catch basin so that the net is
24 cast as wide as possible for public input.

25 When I talk about the importance of

1 personal direct contacts and how important our client's
2 view that, I think a very graphic example of how it can
3 work and the benefit of it is neatly summarized not by
4 our clients, but by a cottagers' association
5 representative, Ms. Judy Daschuk, who testified at the
6 Timmins satellite hearing.

7 I am not going to review her evidence in
8 detail, except to suggest that she was the type of
9 person who suggested to you that that type of personal
10 contact with the planners facilitated and had the means
11 to facilitate effective input and resolution of
12 problems in the timber management planning context.

13 The reference for her evidence is Volume
14 234, page 42,069 and I commend the reading of her
15 evidence to you as an example of the value of personal
16 contact in the timber management planning context and
17 you will gain an understanding, I submit, from her
18 evidence of why our client views it as a valuable means
19 of getting input.

20 Now, having set direct contacts at the
21 local level, having talked about the value of that and
22 having talked about the value of the open houses or
23 information centres as complimenting that and having
24 talked about the value of the local citizens' committee
25 which you have heard a number of discussions about from

1 Mr. Freidin and you have heard evidence in detail at
2 the hearing, the OFIA also believes very strongly that
3 the input and consultation process should take place at
4 more than just the local level.

5 As you will note in the very first
6 section of the OFIA terms and conditions, the first
7 very first term and condition from our client proposes
8 that the input should be recognized as coming from
9 three levels; a local level, a regional level and, very
10 importantly, a provincial level. That is, input from
11 the public, participation by members of the public at
12 those levels.

13 In our written submissions you will hear
14 the phrase that planning should be locally based and
15 provincially oriented and, in our submission, the
16 public input should reflect those various levels across
17 the province and that is why our client recommends that
18 you provide for public input through innovated regional
19 users committees, and you will see that in Section 1 of
20 terms and conditions proposed by our client, and very
21 importantly provincial policy committees where you have
22 people coming together, and you have heard evidence
23 from the OFIA witnesses which I am not going to repeat,
24 but you have evidence from them of the value of having
25 input at a provincial level as much as possible so that

1 provincial goals can reflect and provincial priorities
2 can reflect in as best a way as possible some of the
3 concerns which we have even heard about at this
4 hearing.

5 Let me give you an example. You heard,
6 and it was raised in questions with you, Madam Chair,
7 Mr. Martel, about the question of trust of MNR. We
8 commend to you as a means of dealing with that issue
9 the provincial policy committee, and if you look at our
10 terms and conditions in Section 1 and if you look at
11 the appendices that describe the purposes of the
12 provincial policy committees from our client's
13 perspective as it is proposed, you will see that it
14 proposes to deal with some of the issues or concerns
15 that have been raised by some of the other parties so
16 that these things are not left for MNR to go away with
17 in eight years and then you come back and see what they
18 have done in their review.

19 We believe very strongly in the value of
20 that review and having this as a process where the
21 public gets an opportunity to assess the situation, but
22 we have proposed to you that the provincial policy
23 committee will help set priorities in terms of advising
24 the minister with public input, what they think is
25 important, and helping direct some of those matters so

1 these things are not left.

2 And, therefore, when I suggest to you
3 that you provide for a provincial policy committee I
4 think that is a helpful adjunct to the comments that
5 Mr. Freidin made and I adopt all his comments in
6 respect of that question of trust, but I commend the
7 provincial policy committee to you as another means to
8 assist in that.

9 Now, I am not suggesting that the
10 provincial committee be a watchdog and they are all
11 sitting there whipping MNR every chance, but what I am
12 suggesting to you is that they will be in place and we
13 will no longer hopefully be dealing with an ad hocery
14 type of approach where you have initiatives coming here
15 and initiatives coming there; nobody is really quite
16 sure what priority to sign to them.

17 I don't mean any disrespect to the
18 Minister of Natural Resources in suggesting that they
19 can't understand the public priorities, but the OFIA
20 fails to see why you should not have input at the
21 provincial level when you have provincial objectives
22 and provincial policies under consideration when you
23 can have input at the local level, too.

24 Again, we don't suggest that these
25 committees be binding in any way on the Minister of

1 Natural Resource. In fact, that will be contrary to
2 law, but they would play a very important advisory
3 committee and we would suggest as important as those
4 played by the LCC at the local level.

5 Those committees would help to deal, for
6 example, with some of these non-timber linkages that
7 you were talking about, Mr. Martel, in your questioning
8 yesterday; sorting out the linkages between what we are
9 dealing with here in timber management and those
10 linkages with those other provincial priorities and
11 other provincial strategies and other undertakings of
12 the Ministry of Natural Resources. So I would commend
13 those terms and conditions to you.

14 Now, if I could move on to the second
15 topic, Madam Chair, Mr. Martel, and that is a
16 discussion of the agreements that have been reached to
17 date with respect to some planning proposals and all
18 the lawyers here know and we obviously assume that you
19 are aware that none of these proposals are binding on
20 you in the sense that these are submissions that we
21 recommend to you.

22 However, given that there has been
23 agreement on some of the proposals we recommend that
24 the fact of that agreement should be given some very
25 persuasive weight and that's why I want to focus on

1 some of those agreements that have been reached as a
2 result of the discussions to date between the parties
3 because many of those agreements relate to planning
4 issues.

5 I know that there are those who will
6 probably take issue with this, but I don't think it is
7 necessarily accurate to conclude that little was
8 accomplished from the last negotiation session or from
9 previous negotiation sessions when you consider it from
10 a timber management planning, pure planning issue
11 perspective.

12 On the contrary, I submit that the
13 groundwork was laid through bona fide, good faith
14 negotiations for some important proposed terms and
15 conditions that the major parties now put before you at
16 the end of this hearing with respect to planning
17 issues.

18 For example, substantial progress was
19 made, in our respectful submission, on improvements to
20 the staging and timing of the timber management
21 planning process. When you consider we started from
22 ground zero in terms of agreement, in my respectful
23 submission that is substantial progress for the Board
24 to build with and take and grapple with.

25 Another example is the use of local

1 citizens' committees to increase the degree of public
2 input and the use of a provincial technical committee
3 to assist in the updating of guidelines and to help
4 keep MNR current in its science; something that's
5 important I think to all of the people in this hearing.
6 It is certainly from our client's perspective.

7 In addition, there were several
8 housekeeping matters relating to notices, documentation
9 and the like which although they may appear to be minor
10 do, in fact, contribute to making the process more open
11 which I think you can, in fact, add as a fifth concern
12 of our client to the four I have already indicated. It
13 would be an open process.

14 Progress was made in values mapping, and
15 I am not going to get into the details of negotiations,
16 Madam Chair and Mr. Martel, but this is real progress
17 when you talk about people coming to this table and
18 working on the concept of values mapping and coming up
19 with some agreements on them.

20 Another example, and the last one I will
21 cite with respect to planning issues, is the
22 development of agreements on timber management plan
23 summaries which the OFIA believes would be a major
24 communication tool.

25 You heard and you are going to hear from

1 me this afternoon some summaries of the evidence of
2 people saying how hard it was to get a handle on these
3 timber management plans. In fact, I think you had one
4 filed which took up most of your desk. The summaries,
5 believe it or not, I think are important development of
6 agreement to get to those summaries and get them done
7 in a fashion that makes it easier and open, a more open
8 process for the public to understand. I will come back
9 to that.

10 We recognize, however, that there are
11 many outstanding areas of disagreement among the
12 parties, but nevertheless progress has been made and in
13 many cases the issues in dispute, in fact, relate to
14 matters where the question of the Board's jurisdiction
15 is in question or there are areas where you are going
16 to be called upon to make judgments, as my colleague
17 Ms. Cronk indicated, as to the weight of evidence and
18 how you will assess the witnesses who testified before
19 you.

20 Now, I want to move on to the third topic
21 and having given you hopefully some good news from our
22 perspective in terms of how you should view those
23 agreements on planning and having said that early input
24 is the best type of input, I would like to discuss the
25 third topic and that is the issue of presentation of

1 harvest and access alternatives.

2 I would like to discuss a problem that
3 the OFIA planning experts identified with a portion of
4 MOE, MNR's and indeed the Ontario Federation and
5 Anglers and Hunters and NOTOA's terms and conditions,
6 and I must say we have had little time to review that
7 since we were served with them on Monday, but I believe
8 that in fact the following comments apply equally to
9 their terms and conditions.

10 With respect to the proposed contents of
11 Appendix 4 as proposed in the terms and conditions
12 which now appear to be in common format between the
13 parties and that is, what is presented at the first
14 information centre by way access and harvest options.

15 Just to review very briefly it is the
16 position of the MNR, as we understand it, that access
17 corridor options should be provided at that first
18 information centre and it is the position of MOE that
19 in addition to that, and I believe Forests for Tomorrow
20 and the Anglers and Hunter/NOTOA coalition, that in
21 addition to that harvest options, harvest alternative
22 options be displayed at the first public information
23 centre.

24 Madam Chair, the presentation of
25 alternatives at that stage; i.e., the very first public

1 information centre will, in our submission, help create
2 exactly the type of mistrust for the process that has
3 been generated in the past in the old timber management
4 planning process.

5 Before the general public is actually
6 afforded the opportunity to provide some input into the
7 plan, the MOE and MNR proposals would have the
8 alternatives already identified.

9 Madam Chair, Mr. Martel, one would have
10 thought that you first get input before you select your
11 alternatives, and if you recall the cross-examination
12 of the MOE witnesses and the evidence from the OFIA
13 witnesses the fear is that as soon as the public sees a
14 choice made they would suspect that their input was
15 futile.

16 The OFIA submits that it is far better to
17 have the local citizens' committee and the plan author
18 receive input at the first information centre and then
19 we have that input to draft a workable plan that would
20 then be open to comment and further input.

21 MR. MARTEL: Could we stop there, Mr.
22 Cassidy, just so I understand. You want the LCC and
23 the planner at the first open house to receive the
24 input?

25 MR. CASSIDY: Yes.

1 MR. MARTEL: The next step you just
2 indicated was then that there was opportunity for
3 dialogue.

4 MR. CASSIDY: Yes.

5 MR. MARTEL: Where?

6 MR. CASSIDY: The opportunity for
7 dialogue is taking the input from the open house, the
8 information centre, the LCC dialogues with the plan
9 author, dialogues with the people who attended the open
10 house, dialogues with everybody else who is expressing
11 a concern who was not at the hope house, dialogues with
12 everyone else they can identify who might have or be
13 affected by the timber management plan or eligibility
14 criteria and then they will develop a draft plan from
15 that which is then presented at the second information
16 centre for further public comment.

17 That's a different process from what we
18 have had in the past, I submit, which is what has been
19 the subject of great evidence and it avoids the problem
20 of the public thinking - and I am going to use a
21 vernacular phrase here - that somehow the fix is in
22 because the alternative is up there and yet their
23 choice wasn't made and they automatically start
24 thinking that: Oh, yeah, my input didn't mean much.

25 Now, I respectfully submit that this is

1 the type of situation which we should all seek to avoid
2 and I recommend and our client submits that, in fact,
3 avoid that situation because you may very well end up
4 generating that level of mistrust which was
5 characterized by the old timber management planning
6 process.

7 Now, I would like to come back on this
8 point or I would like to add to this point with regards
9 to Mr. Freidin's submission about the problems his
10 client sees with producing harvest alternatives at the
11 first information centre. I am talk now not about the
12 question of public mistrust, but I am talking about
13 actual practical problems.

14 I can indicate that the OFIA completely
15 supports his position with respect to that issue of
16 producing harvest alternatives at the first information
17 centre. Not only is it a mammoth paper exercise which
18 our client submits is of very little use to the public
19 or to timber management planners, in our submission it
20 may well be misleading to the public.

21 The OFIA's terms and conditions are
22 focused on the belief that there is room for
23 improvement in the involvement of the public generally
24 and interested parties specifically in the allocation
25 process, but in our respectful submission there are

1 more efficient, practical and effective ways than that
2 proposed by the MOE witnesses, which Mr. Freidin was
3 commenting on.

4 It is the view of the OFIA on all of the
5 evidence that at the outset of the planning exercise
6 alternative allocation strategies must be developed and
7 considered. You will see that in the OFIA terms and
8 conditions with respect to the appendix of what is to
9 be presented at the first information centre.

10 The plan author would be responsible for
11 developing these strategies, but would always be
12 assisted by, and this again goes to that ongoing timber
13 management planning concept, input from the local
14 technical group which I will call the planning team and
15 the local citizens' committee.

16 Examples of those strategies were
17 discussed with respect to stand allocations to minimize
18 new road construction, that was discussed in the access
19 evidence, or stand allocations that were designed to
20 promote new access to a management unit or stand
21 allocations, and we have heard this in the access or in
22 the maintenance panel, stand allocations that respond
23 to a prediction that the spruce budworm is moving into
24 a management unit and the strategy may therefore, as
25 Ms. Cronk indicate with respect to protection, the

1 strategy may seem to be more aggressive in allocating
2 stands which are more particularly at risk or
3 allocating stands for protection activities.

4 With respect to harvest alternatives,
5 those types of alternative allocation strategies can be
6 described as management unit level options that look at
7 the advantages and disadvantages surrounding the
8 overall direction of timber management that must be
9 addressed early in the planning process, early. They
10 are oriented to understanding and dealing with major
11 problems, issues and conditions and are usually
12 relatively few in number.

13 However, the MOE witnesses, as the OFIA
14 understands their proposed terms and conditions, seem
15 to concentrate on selecting -- their view of
16 alternative was concentrating on selecting the choice
17 of operating of stands to operate, for example, on one
18 side of a road versus another which I respectfully
19 submit would be a stand level allocation option.

20 Now, while that level of detail may be
21 important with respect to the impact of possibly one or
22 possibly several values, it is my respectful submission
23 that the evidence established that there are possibly
24 several hundreds of those types of allocation options.

25 To select three or four of those

1 combinations, maybe even thousands, but to select three
2 or four of those combinations and present them as
3 allocation alternatives is, in our client's respectful
4 submission, a meaningless exercise because something
5 entirely different may have to be selected as a result
6 of the interplay among allocation strategies and
7 identified values and as a result of the interplay that
8 the witnesses described between the local citizens'
9 committee and affected members of the public, affected
10 interests or the collection of new data and it does
11 little, in our view, to extend the public's
12 understanding of how the allocation process addresses
13 those long-term and short-term management objectives
14 that I talked about.

15 I must also indicate, and finally on this
16 point, Mr. Martel, that we agree with your comments on
17 the value of the proposed MOE conditions for harvest
18 alternatives in terms of the discretion.

19 One of the things we are looking for is a
20 consistency here in that process and that begs the
21 question with respect to that and it invites I think a
22 certain level of concern about the individual process
23 and it be done one way in one unit and one way in
24 another.

25 We are very concerned about remaining and

1 retaining flexibility to adapt to local conditions.
2 That has been inherent throughout the OFIA position,
3 but that question about putting in the extra discretion
4 seemed to be a response to the difficulties that were
5 raised which I have just discussed about harvest
6 alternatives being, in fact, a meaningless exercise and
7 also setting up targets to create mistrust in the
8 public when they see alternatives, give their input and
9 nothing changes.

10 I would like to move on because the next
11 point flows from that. It is another documentation
12 point and it relates to the fourth point of
13 documentation of treatment packages and what I have
14 parenthetically described as the paper war exercise.

15 This is another area, Madam Chair, where
16 there is an issue of significance between our client
17 and a major party and that is the proposal put forward
18 by the Ministry of the Environment to require the
19 documentation of silvicultural treatment packages and
20 that can be found in their term and condition 21(a)
21 which would require the silvicultural ground rules to
22 include documentation on preferred logging method,
23 regeneration treatment, et cetera.

24 Madam Chair, Mr. Martel, while MOE's
25 final argument submissions suggested that there is

1 sufficient flexibility in this proposal, the concern
2 expressed in evidence by professional foresters who
3 testified on behalf of the OFIA and through the
4 cross-examination of the MOE witnesses is that this
5 term and condition will just become a paper exercise
6 which adds little to the process.

7 The MOE, in fact, in their final argument
8 acknowledge this at page 89 of their final argument
9 when they stated that:

10 "The MOE submits that the ground rules
11 should include only packages that are
12 likely to be applied on a management
13 unit, otherwise they become little more
14 than boiler plate prescriptions bearing
15 little, if any, relationship to what will
16 actually happen on the ground."

17 That's a direct quote from their final
18 submissions.

19 I submit, Madam Chair, that you heard a
20 significant degree evidence during the course of this
21 hearing about the many, many circumstances which can
22 dictate and require flexibility in silvicultural
23 treatments over the course of the life of the plan
24 ranging from unforeseen natural calamities through to
25 developments in research which indicate a different

1 method should be used, through to particular impacts on
2 the particular unit.

3 I submit that, in fact, you are going to
4 end up with the very concern that MOE suggests will
5 happen if you impose that type of term and condition
6 and I submit that that is an example of the paperwork
7 that I submit encumbers the timber management planning
8 process and there are ramifications for that.

9 It appears in fact, Madam Chair, Mr.
10 Martel, that the Ministry of the Environment, and I
11 mean this with no disrespect to the ministry, is more
12 concerned with the concept of traceability than it is
13 about the need to keep plans meaningful and
14 understandable.

15 This flies in the face of what we submit
16 is the greater concern that the public has and that is
17 that it is interested in plans that are accessible,
18 open and don't require a forester to be behind a desk
19 when he or she should really be out in the field
20 managing the resources.

21 I want to give you some examples of that.
22 The best example I believe is evidence given at the
23 Sault Ste. Marie hearing by a member of the public -
24 for your reference it is Volume 230 page 41,857 - who
25 said, and I quote:

1 "As I said before, the foresters who
2 would, if they spend more time in the
3 field, if they were allowed to do so,
4 they would be in a position to observe,
5 analyse and make sound decisions, but
6 they can't do that if they can't escape
7 the mountain of paper created by the
8 planning process."

9 Madam Chair, Mr. Martel, I am going to
10 conclude on this point by submitting that the Board
11 should measure the proposals made by the parties in
12 this context and in particular the proposals made by
13 the Ontario Federation of Anglers & Hunters, the
14 Ministry of the Environment and Forests for Tomorrow
15 and in some cases the Ministry of Natural Resources,
16 and I might indicate that the access planning
17 alternatives at the first information centre is another
18 example of that they propose.

19 The Board should measure the proposals
20 made by the parties in this context, the context
21 uttered by that member of the public at the Sault Ste.
22 Marie satellite hearing and bear in mind that
23 additional amounts of paperwork generated by a
24 bureaucratic appetite for process will inevitably mean
25 that there will be fewer and fewer opportunities for

1 foresters to be out in the field managing the timber
2 resource.

3 In addition, the greater the paperwork
4 generated, the greater the level of frustration for
5 members of the public struggling to understand and
6 participate in the timber management planning process.

7 As you heard the evidence of Mr. Dale
8 Munor, an expert timber management planner, timber
9 management planner in Panel 10 who discussed that and
10 the transcript reference for his evidence is contained
11 in our final submissions, that level of frustration of
12 the public and you heard that level of frustration from
13 the member of the public in Sault Ste. Marie, you heard
14 that level of frustration from Mr. Bruno Seppala at the
15 Fort Frances satellite hearing, the retired forester
16 and now a member of the public.

17 I wish to turn to the fifth topic that I
18 am addressing to you today, Madam Chair, Mr. Martel,
19 and that is issues related to access planning. These
20 are issues beyond obviously the setting out of the
21 access options that I have already discussed and there
22 are many issues that have arisen in the evidence, but I
23 am not going to review them all in detail.

24 Our submissions on access planning can be
25 found at page 95 through 97 of Volume 1 of final

1 submissions and at page 20 of Volume 2.

2 However, I wish to comment on the access
3 planning proposals made by the Ontario Federation of
4 Anglers & Hunters and NOTOA with respect to corridor
5 widths and the level of information that must be
6 collected in the course of access planning and the
7 necessity as they see it to plan over a full rotation
8 for an access network.

9 I will deal with the latter proposal in
10 particular. It is difficult to see the utility of a
11 planning requirement over a full rotation. In our
12 client's respectful submission, there is no such
13 utility.

14 If that proposal had been part of the
15 current system of how timber management planning is
16 done in this province, I submit it would be somewhat
17 interesting to see what value you could place on a road
18 network designed in 1872, 120 years ago, roughly a
19 general rotation in Ontario, for northern Ontario when
20 cars hadn't even been invented.

21 What value would that type of rotation
22 planning for access roads have been to a planner?

23 Madam Chair, in our respectful submission
24 it is a waste of time and effort and we submit is an
25 example of one of very first submissions that my

1 colleague Ms. Cronk made in terms of unnecessary
2 regulation and unpractical regulation to require that
3 type of planning. I think that it is nothing more than
4 planning for planning sake.

5 I make similar comments in respect of the
6 level of inventory information required with respect to
7 road corridors contained in the Anglers and Hunters and
8 NOTOA's terms and conditions.

9 Now, I would like to turn to the sixth
10 topic that I wish to discuss with you today and that is
11 the issue of the merits of the American planning
12 system.

13 The OFIA submits that there is a bias in
14 Forests for Tomorrow's terms and conditions which they
15 no doubt will freely admit to in favour of
16 American-style resource management planning.

17 Mr. Freidin has gone through with you the
18 relationship between the American and Canadian,
19 Ontario, timber management planning, but I would submit
20 that in any event it would be a grave error if it were
21 perceived by anyone in this room that the American
22 national forest planning system is somehow worthy of
23 adopting here.

24 In fact, it is our client's submission
25 that the American approach has been characterized in

1 the evidence as chockful of problems with many of the
2 plans having led most of their way right into
3 litigation.

4 Mr. Freidin was talking on Monday about
5 how you measure the value of timber management plans or
6 how you measure the value of resource management plans
7 generally and he referred to the evidence of Ms. Dahl
8 in terms of the degree of consensus obtained and he
9 suggested that was not an appropriate measurement of
10 the value of timber management plans or the value of
11 resource management.

12 I would adopt his submissions, but if you
13 accept Ms. Dahl's form of measurement that that is
14 somehow a barometer of the quality of the system, then
15 I submit you should apply that reasoning and give a
16 negative vote - I was almost going to say a no vote but
17 I won't - a negative vote to the American style of
18 timber management planning, the American style of
19 resource management planning. The evidence about its
20 pitfalls, Madam Chair, is discussed in our final
21 argument in Volume 2, pages 4 through 11.

22 Some witnesses have suggested that the
23 American system is evolving away from its problems.
24 Our submission is that the Board should hardly consider
25 adopting planning proposals that may import problems

1 from a system that is yet to define itself and whose
2 track record to date - and I am using a charitable
3 word - is dubious.

4 In conclusion, I would rely and adopt and
5 support Mr. Freidin's submission that in any event the
6 American style of planning that Mr. Smith describes is
7 in fact the land use planning exercise and I
8 respectfully submit that for all of the reasons Ms.
9 Cronk indicated to you and Mr. Freidin indicated to you
10 that is the purpose of this hearing.

11 I want to move away briefly from planning
12 to just discuss for a minute -- and that is not one of
13 the topics that I have listed for you. I just want to
14 move away briefly from planning and practice for a
15 minute to discuss a comment made by Forests for
16 tomorrow in its final argument and that can be found at
17 page 156, paragraph 315, that there is some utmost
18 importance to be attached to the suggestion that
19 neither the Ministry of Natural Resources or our
20 clients led reply evidence in contradiction of effects
21 documented by Forests for Tomorrow before the Board.

22 In our submission, Madam Chair, Mr.
23 Martel, ample evidence was led and cross-examinations
24 were conducted to establish that on balance the effects
25 allegedly documented by Forests for Tomorrow either did

1 not exist, were vague in the extreme or were adequately
2 minimized or mitigated.

3 The Board, in fact, itself saw many of
4 the specific sites that people talked about and can
5 draw its own conclusions.

6 Just by way of example, you will recall
7 the evidence of Mr. Jeffery Meakin at the, I believe,
8 Timmins satellite hearing in which he after an
9 allegation was made about his company's practices, he
10 then took the stand and responded to it and I submit
11 that many of the comments made by witnesses critical of
12 effects of timber management planning were addressed in
13 evidence.

14 In conclusion, I submit that in fact the
15 evidence suggests that the effects of timber management
16 can, through the timber management planning process
17 that our client has proposed to you, be avoided,
18 minimized or mitigated.

19 Now, I want to come back to my topics,
20 Madam Chair, and I want to finish off by discussing the
21 last topic that is affordability in planning, the
22 affordability of the terms and conditions you have had
23 proposed to you by the parties.

24 In our submission in respect of this can
25 be found at Volume 2, pages 31 and 32 of our final

1 submissions.

2 Madam Chair, Mr. Martel, the witnesses of
3 MNR's fifth reply panel testified that the Ministry has
4 to date expanded its proposed terms and conditions to
5 accommodate many of the concerns of the other parties
6 to this hearing. As a result, these witnesses
7 indicated that the cost estimate for implementation of
8 the Ministry's proposed terms and conditions be
9 increased 100 per cent from its original estimate to a
10 total annual cost of over \$56-million. That's in
11 Volume 394 of Mr. Gordon's evidence.

12 MNR witnesses admitted that not one extra
13 tree will be planted, nor will one more hectare be site
14 prepared as a result of this annual expenditure. It is
15 submitted that the expenditure of such a significant
16 amount of funds on a yearly basis on process expenses
17 as opposed to actual activities warrants very close
18 examination by the Board to determine if the demands of
19 the various parties as expressed in their proposed
20 terms and conditions are economically feasible,
21 practical and warranted.

22 I go back in closing to the comments of
23 my colleague, Ms. Cronk, in which she indicated that it
24 is the Industry's position that this Board should
25 respectfully consider the proposals by the other

1 parties in light of the economic condition of not only
2 this industry, but in light of the economic conditions
3 of the province as a whole and bear in mind that some
4 of those proposals may be simply unaffordable.

5 I respectfully submit that you should
6 view the proposals through the lens of this issue of
7 practicality and the lens of affordability with respect
8 to the planning process and, indeed, with respect to
9 all other aspects of the parties' proposed terms and
10 conditions.

11 Subject to any questions you may have,
12 Madam Chair, Mr. Martel, I propose to conclude my
13 remarks on planning and indicate that our client
14 respectfully submits and commends the proposed terms
15 and conditions of the Ontario Forest Industry to you,
16 and unless you have any further questions I propose to
17 conclude.

18 MADAM CHAIR: I guess we don't have a
19 microphone.

20 We do have a few questions of
21 clarification on some specifics in your terms and
22 conditions, Mr. Cassidy.

23 MR. CASSIDY: Certainly.

24 MADAM CHAIR: This was a point we were
25 trying to raise yesterday about whether this was the

1 time and place to do this because we have some of those
2 questions for other parties, or is it better to take
3 these kinds of matters -- take them up afterwards in
4 writing?

5 I will put to Mr. Cassidy the sorts of
6 the clarifications that we are looking at and other
7 parties can expect the same questions from us.

8 We are not going to get any new evidence,
9 we have got lots of evidence in front of us. What we
10 want to do is ask each of the parties to identify for
11 us where in the evidence to clarify these questions we
12 are asking could assist.

13 I don't know how we are going to respond
14 to that otherwise, but let me put the questions out for
15 you and the other parties are welcome to comment on how
16 we are going to get this information because we are
17 going to ask the same of you.

18 Mr. Cassidy, before we do this, are you
19 finished, Ms. Cronk, with all of your submissions for
20 today?

21 MS. CRONK: No, Madam Chair. I have some
22 concluding submissions to make, but Mr. Cassidy and I
23 would welcome whatever clarifications you wish to raise
24 now.

25 MADAM CHAIR: Does this interrupt?

1 MS. CRONK: Not at all.

2 MADAM CHAIR: We can deal with this and
3 then hear your submissions.

4 MS. CRONK: Absolutely.

5 MR. FREIDIN: Madam Chair, the court
6 reporter has indicated that she is having difficulty
7 hearing you. I am just wondering whether there is any
8 possibility of getting the mikes set up or dealing with
9 that in some way.

10 MADAM CHAIR: Why don't we take a
11 15-minute break then.

12 ---Recess at 1:55 p.m.

13 ---On resuming at 2:15 p.m.

14 MADAM CHAIR: Mr. Cassidy.

15 MR. CASSIDY: Yes, Madam Chair.

16 MADAM CHAIR: I will repeat, I don't know
17 if the Board can satisfy itself today with what we want
18 to get from you or the other parties with respect to
19 being referred specifically to the facts that exist in
20 the evidence and the record we have before us.

21 The Board will not allow some new phase
22 of the hearing to open up. We don't want new evidence.
23 We want this hearing to end, but we also expect to be
24 assisted to the extent we can with respect to
25 information management.

1 I don't think it's a good use of the
2 Board's time to spend a great deal of time looking
3 through the very large record to find specific page
4 references to documents when these could be supplied to
5 us fairly readily.

6 Had we had in our hands the final written
7 argument for a decent period of time so that we could
8 have read and digested all of the parties' written
9 argument I think we would have found in there many of
10 the references to the evidence that we are looking for.

11 Of course, none of us has had time to go
12 through the written arguments to the extent that we
13 would like to have done in preparation for the oral
14 submissions, so we are finding ourselves in a bit of a
15 bind. We have always been prepared when we have come
16 to a stage in the hearing of having read all the
17 evidence and understood and had our questions ready.
18 That hasn't been possible at this last stage of it.

19 So I am going to put before you examples
20 of the kinds of matters that we are going to be looking
21 for references to the record of and, again, I think
22 some of these things might be in final argument, might
23 be in one of these pages and it might already be
24 sitting there waiting for us to find.

25 But, at the same time, we might other

1 matters as we enter into our very tense deliberations
2 about making our decision. We might have other
3 questions and, again, these are not questions of new
4 evidence. We are not asking you to put forth any sort
5 of a meaning on what we are asking. We are asking to
6 be shown where your witnesses have said such and such.
7 That's what we are interested in.

8 I would want you to see this as an
9 administrative and information management kind of
10 questioning from the Board. We aren't interested in -
11 I think Ms. Cronk said yesterday - spins on what we are
12 asking you. We simply want to know where is it in the
13 record, where has it been expressed most fully and most
14 understandably. Again, these matters may be in the
15 final written argument, but we haven't had time to
16 digest all of it.

17 The sorts of examples I will give you now
18 include the following. The first matter, where in the
19 record did your witnesses discuss the involvement of
20 the plan author in working with the district manager in
21 the collection of the background information, in what
22 you describe as a pre-planning stage.

23 MS. CRONK: Could we have that again,
24 please, Madam Chair.

25 MADAM CHAIR: Yes. In your proposed

1 timber management planning system you have a
2 pre-planning stage and you have distinct tasks that
3 will be done by the district manager and those that
4 will be done by the plan author.

5 Where in the record did we receive
6 evidence describing those different tasks to be done by
7 those two persons.

8 A second example: Where in the evidence
9 do we have OFIA's position on support or opposition to
10 MNR's proposed new environmental guideline for timber
11 management planning.

12 On a third matter: Where in the record
13 have you outlined your reasons for wishing to delete
14 the 20-year eligibility criteria from the timber
15 management plan itself and have it appear only in the
16 information available at the first information centre.

17 In your proposed terms and conditions 33
18 and 34 you discuss or you propose ways of identifying a
19 recognize value and subsequently an enhanced planning
20 process.

21 Where in the record have your witnesses
22 explained the triggers to the enhanced planning
23 process; in other words, there is a step from being a
24 recognized value to becoming something that triggers
25 the enhanced planning process. Where in the record is

1 that fully described by your witnesses.

2 Where in the record have your witnesses
3 explained why you want to see socio-economic impact
4 studies done on the long-term scientific assessments of
5 the guidelines pertaining to T's and C's 66 and 67.

6 MS. CRONK: Could I have that one again,
7 please, Madam Chair.

8 MADAM CHAIR: Where is your evidence on
9 the reasons for socio-economic impact studies being
10 done on the long-term scientific assessments of the
11 guidelines as we have proposed in terms and conditions
12 66 and 67.

13 Finally for today, can you point us to
14 where your witnesses explain clearly on the record the
15 basis of your term and condition No. 28 involving the
16 opportunity to include stands on operation maps which
17 are selected due to a stand's location being within
18 close proximity of the eligible areas.

19 Those are the questions we would put to
20 you today and also as a way of showing the other
21 parties the kinds of clarifications we want and we want
22 the parties' cooperation in helping us get to the
23 evidence very quickly on these matters.

24 Again, some of this will be covered in
25 the written argument and it is redundant for me to ask

1 you right now, but until I have fully digested it I
2 don't know and I don't want to have it come as a
3 surprise to any of the parties that during its
4 deliberations the Board may have the need to receive
5 some helpful direction into our very large record.

6 Ms. Cronk?

7 MS. CRONK: Thank you, Madam Chair.

8 On behalf of our client, and I suspect on
9 behalf of all other counsel, all counsel in this room
10 wish to assist the Board in information retrieval and
11 understand the need to do that.

12 The question from counsels' point of view
13 is how to do that in a way which doesn't invite
14 inevitably the very kind of exchange that you don't
15 wish and that we don't wish to see happen either.

16 With respect to the questions of us that
17 you have identified today, those are matters that we
18 can answer before the end of legal argument. Not ours,
19 I wouldn't do that to Mr. Cassidy. I do note they all
20 fall in the area that he addressed and I wouldn't turn
21 to him immediately and say just do that, some would but
22 I won't, I don't mean that to be facetious, but
23 obviously it can't be done today, but we can provide
24 that to you and we will do that before the completion
25 of legal submissions of other parties before you and

1 any others that occur to you -- if questions not asked
2 of us today occur to you, the submissions that we have
3 made, before the completion of legal submissions by
4 others we will do everything we can to assist in
5 providing a response.

6 The one area where there is some
7 difficulty concerns questions that occur to you later
8 after legal submissions are complete.

9 I understand that while I was not here
10 yesterday, Mr. Cassidy and other counsel were aware
11 that raised this with Mr. Freidin and I can tell you
12 that there are discussions ongoing among counsel as to
13 what, if anything, collectively we could say to you
14 about that because that one is more problematic, even
15 when as a factual matter it is information retrieval,
16 and I do not know what response we will be able to make
17 for our clients to you on that.

18 So I am distinguishing between questions
19 asked today and before the end of argument and ones
20 that occur to you weeks from now or a lengthier period
21 of time, but I am also saying that all of us wish to
22 assist.

23 So it is not a lack of willingness to do
24 that by anyone, certainly not by us, in expressing the
25 caution that I have expressed, but we haven't had a

1 chance to fully discuss that.

2 I have spoken briefly, as Mr. Cassidy
3 has, to Mr. Freidin and to Ms. Seaborn. I haven't had
4 a chance to speak to Mr. Lindgren or Ms. Swenarchuk and
5 others and we will have to do that, but there is that
6 difference.

7 So we understand the problem, the
8 practical time issue for the Board and we will do what
9 we can to accomodate it and on these particular
10 questions we will put the answers together for you and
11 deliver them prior to the completion of legal
12 submissions by other parties, if that's satisfactory.

13 MADAM CHAIR: That's fine, Ms. Cronk,
14 but you understand, again, that this matter won't go
15 away at the end of final argument and the Board hopes
16 that the parties will continue to discuss this and see
17 to see if they can put a proposal before us that is
18 acceptable to us.

19 Again, we don't want any explanation by
20 way of the points that we are raising with our
21 questions. They apply to the terms and conditions as
22 they are written, they are based on, for the most part,
23 evidence that we have heard and we are looking for
24 citations to the record. We are not looking for
25 further explanation, elaboration, written

1 clarification. That's not what we would accept
2 understand any circumstances.

3 MS. CRONK: That helps considerably,
4 Madam Chair, and it was the intention to respond to you
5 on that. I just can't do it today.

6 Would it be appropriate at this point,
7 Madam Chair, for us to complete our submissions?

8 MADAM CHAIR: Please go head.

9 MS. CRONK: I should say in doing that
10 that in respect of the matters about which you have
11 already received our submissions, both yesterday and
12 today, if there are questions related to those matters
13 which now occur to you we will do everything we can to
14 assist with that.

15 MADAM CHAIR: I would just add here, Ms.
16 Cronk, that, as you know, matters don't occur to us.
17 We have analysed every submission we have, every
18 received and every piece of evidence, we do that on a
19 day-by-day basis. The question we put to the parties
20 are not impulsive. They come out of our doing some
21 extensive research on the record itself and they come
22 as a result of our ability to digest the information we
23 receive and to ask the questions that help us make the
24 decision.

25 Certainly if any questions come to us

1 with respect to something that is being said in final
2 argument we will put those questions to you, but our
3 questions are rarely impulsive and come from the kind
4 of deliberation that we have gone through in four and a
5 half years of this hearing where it is impossible to
6 receive large amounts of information and know what we
7 want to ask about it or know what will be helpful for
8 us until we have had the chance to do that and with
9 respect to written argument, that opportunity hasn't
10 been there for the Board.

11 MS. CRONK: Madam Chair, my choice of
12 language was perhaps taken for something other than it
13 was intended. I didn't mean to suggest otherwise. It
14 was simply to indicate that if there are matters on
15 which you wish our assistance we would be pleased to
16 provide that. Nothing more.

17 MR. MARTEL: Can I say something?

18 MS. CRONK: Yes, sir.

19 MR. MARTEL: I think what worries me at
20 least is that, and I don't know how we are going to
21 handle it, but as my colleague has indicated the
22 information we have received is late despite 14 months'
23 notice or 15 months' notice. The information was late
24 by everyone except I guess MOE and NAN.

25 The question is to identify where things

1 occur, but I have some difficulties with some of the
2 terms and I don't know how we are going to handle that.
3 You might just have to take us at face value later on,
4 but the trouble is, in the first question, for example,
5 to get clarification just on where your plan and your
6 plan author come together with the MNR staff at the
7 beginning of the process, and we have looked at it, I
8 mean, we have spent hours trying to sort out at what
9 stage you envisage the plan author starting to gather
10 material, for example, as opposed to MNR.

11 It looks as though you are suggesting MNR
12 do some of this on their own ahead of time and we have
13 spent a considerable amount of time trying to figure
14 out just how those two things came together, at what
15 stage.

16 The lateness of getting the information,
17 where we would have been able to put a whole series of
18 questions to you just for clarification sake, makes it
19 difficult I'm afraid and through no fault of ours
20 because, in my opinion, there was sample notice, 15
21 months' of it, to be ready, but it creates a problem in
22 looking at terms and conditions which you are not quite
23 sure what they mean and how are we going to clarify
24 that?

25 We can look to the information and that's

1 what my colleague is attempting to do, is to get from
2 you a process. That's not always to say, though, that
3 even in reading the material you might get the
4 clarification you need.

5 I think you should keep that in mind as
6 well because just on that little item itself you might
7 look at your evidence and we tried by looking at the
8 terms and conditions to see where they kicked in, at
9 what stage, do they start at the same point of
10 information gathering, something as simple as that
11 which makes a whole lot of difference in what you are
12 going to conclude maybe is there.

13 So when you are discussing amongst
14 yourselves I hope you realize that this process,
15 everyone being late, has left of the Board who are
16 going to make the decision with some concerns.

17 MS. CRONK: Madam Chair, Mr. Martel, then
18 with respect to the final concluding submissions on
19 behalf of the OFIA, they may be succinctly stated and I
20 propose to do that or try to do that.

21 You have heard at some length from me and
22 then from Paul Cassidy this afternoon as to what the
23 position of our client is on various of these issues
24 and we are mindful of the matter you have raised with
25 us now and we will try to sort that out.

1 We started our submissions yesterday by
2 indicating how very important this hearing is to the
3 forest products industry in the area of the undertaking
4 and by asking you to consider in light of the extensive
5 evidence which you have received concerning the people
6 in the area of the undertaking, the communities in the
7 area of the undertaking and the forest products
8 industry asking you to accept that your decision on
9 some of the matters that we dealt with in our
10 submissions yesterday and today will have significant
11 long-term consequences for the forest products industry
12 and for the communities which depend on them.

13 For this reason we respectfully urge the
14 Board again when you come to consider the terms and
15 conditions which you will impose should you approve the
16 undertaking to consider that regulation not
17 demonstrated on the evidence to your satisfaction to be
18 necessary to protect the environment should not be
19 imposed unless you can be satisfied that they will not
20 result in negative economic impact in the area of the
21 undertaking and on the forest products industry.

22 When we say unless you can be satisfied
23 in that regard, I mean on an evidentiary base of
24 information before you, on evidence that is before you
25 that you regard as reliable.

1 I ask you, again, to keep in mind the
2 evidence you heard from the Industry executives and
3 from Industry professional foresters that regulation
4 not necessary in the interest of protection of the
5 environment can have a very negative long-term effect
6 on the socio-economic condition of the people in the
7 area of the undertaking.

8 We ask you also to keep foremost in your
9 mind as you reach your decisions in this case and as
10 you write your reasons that this is a timber management
11 hearing, as we suggested at the outside of our
12 submissions, that that's what this undertaking relates
13 to, it is management of the timber resource, and we ask
14 you to keep foremost in your mind as you assess each
15 proposed term and condition put toward by all of the
16 parties that the purpose of the undertaking is to
17 ensure provision of a predictable and continuous future
18 supply of wood to the forest products industry in
19 Ontario, to the Industry, Madam Chair, Mr. Martel, a
20 future supply of wood to the Industry.

21 We suggest to you that if approval is
22 granted to the undertaking, and we ask you to grant
23 that approval, that whatever you decide on the
24 multitude of issues before you that each decision
25 should be measured against these two criteria on each

1 issue.

2 First, is the proposed resolution to the
3 issue, is the proposed term and condition oriented and
4 relevant to the purpose of the undertaking.

5 Secondly, does it or will it be likely to
6 negatively affect the purpose of the undertaking.

7 In our respectful submission, if the
8 answer to the first question, is it oriented and
9 relevant to the purpose of the undertaking, if the
10 answer to that is no, it is not a matter to be dealt
11 with jurisdictionally by this Board.

12 Conversely, if the answer to the second
13 question is yes, that it does negatively affect the
14 purpose of the undertaking or it is likely to, we urge
15 you to refuse it or reject it because it will be a term
16 and condition that's not consistent with and which will
17 not permit fulfillment of the purpose of the
18 undertaking.

19 We ask you, Madam Chair, Mr. Martel, to
20 accept the undertaking that's before you from the
21 Ministry of Natural Resources as they have defined it
22 and as you have characterized it in your ruling of
23 January of 1990 and to approve it subject to the terms
24 terms and conditions proposed by the OFIA that are
25 before you in Volume 2 of our written submissions.

1 I wish, Madam Chair, to indicate that due
2 to matters beyond my control I will not be present for
3 the balance of the oral argument before you and I wish
4 you to know that there is no discourtesy in any way
5 intended by that, and behalf of Mr. Cassidy and myself
6 we wish to thank you for the courtesy that has been
7 exhibited and extended to us throughout four very long
8 years, and I know we speak for our clients as well.

9 Those are our submissions and we thank
10 you.

11 MADAM CHAIR: Thank you very much, Ms.
12 Cronk. We appreciate the last two days of your
13 argument and Mr. Cassidy's participation. Thank you
14 very much.

15 We will adjourn the hearing now and
16 return on Monday morning at 9:00 a.m.

17 ---Whereupon the hearing was adjourned at 2:40 p.m., to
18 be reconvened on Monday, October 26, 1992 commencing
at 9:00 a.m.

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25 MC/BD [C. copyright 1985].



